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Supreme Court of Kentucky

2023-SC-0086-DG

BLAKE JEFFREYS — APPELLANT

V.

ON REVIEW FROM COURT OF APPEALS
NO. 2021-CA-0949
JEFFERSON CIRCUIT COURT NO. 20-CR-001599

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION OF THE COURT BY JUSTICE CONLEY

AFFIRMING

Blake Jeffreys pled guilty to one count of promoting human trafficking on May 14, 2021. The Jefferson Circuit Court imposed a sentence of one year in prison, probated for five years, and ordered him to pay $10,000 pursuant to KRS[1] 529.130. Jeffreys had requested the trial court waive that payment under KRS 534.030(4). The trial court declined to do so at sentencing. Jeffreys appealed, arguing KRS 529.130 imposes an unconstitutional excessive fine and, in the alternative, that the fine should have been waived. The Court of Appeals rejected these arguments and affirmed. Jeffreys sought discretionary review only for the latter argument. We granted that motion. Upon review of the parties' briefs and arguments, we affirm the Court of Appeals.

I. Facts and Procedural Posture

[1] Kentucky Revised Statutes.

Jeffreys was arrested in a sting operation, after unknowingly communicating online with an undercover police officer and arranging to meet up at a hotel, where sex would occur in exchange for $120. On May 14, 2021, Jeffreys pled guilty to promoting human trafficking; an offense defined by KRS 529.110(2) as "[r]ecruits, entices, harbors, transports, provides, or obtains by any means, or attempts to recruit, entice, harbor, transport, provide, or obtain by any means, another person, knowing that the person will be subject to human trafficking." Human trafficking is further defined as "forced labor or services; or [c]ommercial sexual activity through the use of force, fraud, or coercion, except that if the trafficked person is under the age of eighteen (18), the commercial sexual activity need not involve force, fraud, or coercion[.]" KRS 529.110(7). We reiterate that there are no constitutional arguments before this Court.

At sentencing, Jeffreys received a one-year sentence of imprisonment to be probated for five years. Jeffreys also besought the trial court to waive the $10,000 payment under KRS 534.030(4). The trial court declined but stated the issue could be revisited if Jeffreys' probation officer suggested waiving the fine at a later point in time. Instead, the trial court ordered the payment be made over the five-year duration of probation. On appeal, the Court of Appeals held that KRS 534.030(4) did not apply to a fee imposed under KRS 529.130; and the fee could be waived or adjusted after being imposed at sentencing upon a show cause motion, quoting *Commonwealth v. Moore*, 545 S.W.3d 848, 853 (Ky. 2018).

Before this Court, Jeffreys argues KRS 529.130 imposes a $10,000 fine, which cannot be imposed upon him as he is indigent. Jeffreys maintains this argument on the basis that the payment is made as a punishment for an offense against, and defined by, the Commonwealth; and does not reimburse the government for a service it has provided. He further argues that a show cause hearing afterward would not alleviate the harm, first, because the threat of jail looms over the probationers if they cannot pay; and second, the statute does not allow the probationer to seek reduction of the payment on his own behalf but can only be held "if the defendant has not complied with the installment payment plan by the scheduled date[,]" KRS 534.020(2)(a). In short, to get a show cause hearing under the statute, Jeffreys would have to first willfully disobey the trial court's order.

The Commonwealth responds that Jeffreys never made a motion with an affidavit, nor was there a finding by the trial court, that he is a poor person under KRS 453.190. And, even if that were so, that statute is limited to costs necessary "to file or defend any action or appeal" within the judiciary. Second, the Commonwealth argues the payment of $10,000 is a fee, not a fine. Third, that KRS 534.030(4) is limited to fines required by that section of the Revised Statutes. Finally, the Commonwealth suggests that KRS 534.020(3)(a)1 could provide a potential backstop but urges us not to decide that question now.

II. Analysis

The interpretation of statutes is a question of law reviewed *de novo*. *Moore*, 545 S.W.3d at 850. We adhere to the plain meaning of the words in a statute—"if the meaning is plain, then the court cannot base its interpretation on any other method or source." *Id.* at 851 (quoting *Louisville v. Rothstein*, 532 S.W.3d 644, 648 (Ky. 2017)).

> Any person convicted of an offense in KRS 529.100 or 529.110 shall be ordered to pay, in addition to any other fines, penalties, or applicable forfeitures, a human trafficking victims service fee of not less than ten thousand dollars ($10,000) to be remitted to the fund created in KRS 529.140.

KRS 529.130. Jeffreys indisputably qualified for application of this statute given his guilty plea to an offense defined in KRS 529.110(2). The principal question presented by this appeal is whether the former statute works in tandem with KRS 534.030. It does not. The latter statute states,

> Except as otherwise provided for an offense defined outside this code, a person who has been convicted of any felony shall, in addition to any other punishment imposed upon him, be sentenced to pay a fine in an amount not less than one thousand dollars ($1,000) and not greater than ten thousand dollars ($10,000) or double his gain from commission of the offense, whichever is the greater.

KRS 534.030(1). The statute then states, "[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." *Id.* at (4). Jeffreys has insisted that KRS 529.130 imposes a fine, not a fee. We conclude that argument is a red-herring for purposes of resolving this case. Even assuming he is correct that he had a fine imposed, it was not imposed pursuant to KRS 534.030(1). In *Moore*, we held

that fees for misdemeanors were subject to KRS 534.040 only if those misdemeanors were "defined within the penal code and for which KRS 534.040 establishes the applicable fines." *Moore*, 545 S.W.3d at 850. KRS 534.030 is the counterpart for felony offenses and the applicable language is the same—it "is perfectly analogous to its misdemeanor counterpart[.]" *Id.* at 851. KRS 534.030, therefore, only applies to felony offenses defined within the penal code, i.e., KRS Chapters 500 through 534; and for which KRS 534.030 establishes the amount to be paid. While Jeffreys' offense falls under the first prong, it fails the second. His $10,000 payment is established by KRS 529.130.

As to the argument that KRS 453.190 applies, we disagree. That statute says,

> A "poor person" means a person who has an income at or below one hundred percent (100%) on the sliding scale of indigency established by the Supreme Court of Kentucky by rule or 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.

KRS 453.190(2). Jeffreys explicitly argues in his brief that his income was "at an amount less than 150%[.]" That is not the standard. A person whose income is less than 150% on the sliding scale of indigency, but more than 100%, cannot qualify as a poor person. Jeffreys has argued, however, that the trial court implicitly found him to be a poor person by waiving other costs and fees, with the exception of the ten dollar a month probation fee. That is irrelevant. KRS 453.190(1) limits its ambit to "allow[ing] a poor person residing in this state to file or defend any action or appeal therein without paying costs[.]" "The costs to which KRS 453.190 . . . applies are those which are necessary to allow

indigent persons access to the courts. Traditionally those have been interpreted as costs payable to court officials and necessary in order to prosecute or defend a claim." *Jones v. Commonwealth*, 636 S.W.3d 503, 506 (Ky. 2021) (quoting *Cummins v. Cox*, 763 S.W.2d 135, 136 (Ky. App. 1988)). The payment under KRS 529.130 is not a cost necessary to prosecute or defend a claim, nor is its imposition a bar to accessing the courts under Ky. Const. § 14.

At this point the Commonwealth no doubt would urge us to conclude. We, however, do not agree that that we can pass without comment upon KRS 534.020. "Our rules of statutory construction . . . do not constrain us from commenting upon plainly-written statutes when oddities within them are exposed by the litigation before us." *Moore*, 545 S.W.3d at 851. Given that waiver of the payment is not subject to a finding of indigency under KRS 534.030, nor a finding as a poor person under KRS 453.190, there is a distinct possibility that this legislation is subject to attack on constitutional grounds if ever imposed upon a person who has been properly found to be indigent or a poor person. We do not at all suggest that outcome would be certain. Instead, we take the opportunity to remind the trial courts that *Moore* is once again applicable.

KRS 534.020(1) allows for trial courts to establish payment plans for courts costs, fees, and fines. KRS 534.020(2)(a) requires a defendant be given notice of the details of that payment plan in writing when imposed, and the notice shall "indicate that if the defendant has not complied with the installment payment plan by the scheduled date, he or she shall appear on

that date to show good cause as to why he or she is unable to satisfy the obligations." If a show cause hearing is conducted, the court shall consider whether the failure to adhere to the payment plan is "due to an inability to pay, and if so, the court may enter an order allowing additional time for payment, reducing the amount of each installment, or modifying the manner of payment in any other way[.]" KRS 534.020(3)(a)1. In *Moore*, when considering a DUI (fourth offense) service fee, we stated that fee is "is subject to waiver under KRS 534.020(3)(a)(1), which may or may not result in complete elimination of the defendant's responsibility for payment of the service fee." *Moore*, 545 S.W.3d at 853.

We, therefore, agree with the trial court and Court of Appeals that Jeffreys can bring a motion to show cause and have his ability or inability to pay considered in detail. Since the payment is subject to waiver, it is perforce subject to reduction. The trial court below suggested that it would consider the matter upon the recommendation of Jeffreys' probation officer. We disagree; nothing in the statutes' predicates reduction or waiver of a fine upon a probation officer's opinion. A probation officer exists to ensure Jeffreys, and other probationers, are complying with the terms of probation. While that is a relevant factor, it is not the sum of what a trial court should consider. Trial courts should look to the crime(s) the defendant was convicted of (not the one(s) he was charged with, if the charges were amended, nor charges that might have been brought but were not); his financial status; the number of dependents the probationer may have; restitution orders to victims, if

applicable; and, generally, other financial considerations the defendant may put before the court by proper evidence. It is indeed within the General Assembly's rod of authority "to define crimes and assign their penalties[.]" *Id.* at 852 (cleaned up) (emphasis removed). But when the General Assembly has provided the means by which the judiciary may both enforce the law and temper its harsher effects then it ought not be shunned.

III. Conclusion

Whether the payment imposed by KRS 529.130 is a fee or a fine is not a question we need to determine. Even assuming it is a fine, it is not imposed by KRS 534.030, therefore it was not subject to waiver at the time of sentencing even if Jeffreys is indigent. Likewise, the trial court never made a finding that Jeffreys is a poor person under KRS 453.190(2); but even assuming the trial court did so, the costs that statute "applies [to] are those which are necessary to allow indigent persons access to the courts." *Jones*, 636 S.W.3d at 507. Therefore, it is also inapplicable. Jeffreys, however, is not without means of potentially reducing or waiving the payment. Pursuant to KRS 534.020(3)(a)1 and our interpretation of that statute in *Moore*, 545 S.W.3d at 853, he may petition the trial court to waive, reduce, or otherwise modify the payment plan upon proper findings of fact supported by substantial evidence. The Court of Appeals is affirmed.

All sitting. VanMeter, C.J.; Bisig, Keller, Lambert, and Nickell, JJ., concur. Thompson, J., dissents by separate opinion.

THOMPSON, J., DISSENTING: Respectfully I dissent because the facts neither justify Jeffreys's conviction for promoting human trafficking nor the imposition of a grossly disproportionate $10,000 fee based on his conduct. Additionally, it is unjust to require our trial courts to impose such an enormous mandatory fee where a defendant has a complete inability to pay it.

I. The Facts Did Not Support Charging Jeffrey with Promoting Human Trafficking.

According to the police report, Blake Jeffreys responded to an internet ad for escort services and was contacted by an undercover police officer posing as a sixteen-year-old. There is no indication in the record that Jeffreys was seeking to solicit sex from a child or to exercise the type of control necessary to traffic anyone when he contacted that advertised escort service. They arranged to meet for sex at a hotel in exchange for a payment of a sum of money. Jeffreys arrived at the hotel and was arrested.

Jeffreys was indicted for promoting human trafficking with a victim under eighteen (Kentucky Revised Statutes (KRS) 529.110, a Class C felony) and unlawful use of electronic means to induce a minor to engage in sexual activity (KRS 510.155, a Class D felony). The predicate sexual activity appears to be third-degree rape based on Jeffreys being more than ten years older than a sixteen-year-old (KRS 510.060(1)(b), a Class D felony).

Pursuant to a plea agreement, Jeffreys was convicted of promoting human trafficking, forced labor, not involving commercial sexual activity, sentenced to a year of incarceration, probated for five and ordered to pay $10,000 as a required "human trafficking victims service fee."

I do not believe that Kentucky's human trafficking statutes were intended to apply to this situation where no one was ever at risk of any sort of trafficking. I acknowledge that KRS 529.110 was written very broadly and promoting human trafficking encompasses attempting to recruit another person for commercial sexual activity (and the statute specifically provides that no force, fraud, or coercion needs to be established if said person is under the age of eighteen). However, it makes no rational sense that Jeffrey was indicted for promoting human trafficking with a victim under eighteen, a Class C felony, for conduct that if it had been carried out would have been third-degree rape, a Class D felony, and his attempt to carry out such a crime would only constitute a Class A misdemeanor.[2]

Jeffreys was attempting to engage another in the oldest occupation known to humankind. Had the undercover agent posed as a prostitute of legal age, Jeffreys's conduct would not be a crime at all as Kentucky has completely decriminalized the solicitation of prostitution.

A "John" cannot be convicted under KRS 529.040 for "promoting prostitution" (a Class A misdemeanor), which encompasses "knowingly advanc[ing] or profit[ing] from prostitution" because the definition provided in KRS 529.010(2) explains that "advancing prostitution" does not encompass the behavior of a "patron" of a prostitute and KRS 529.010(11) explains that

[2] *See* KRS 506.010(1)(b) (providing an "attempt" can be committed if the defendant's "intentional conduct . . . is a substantial step in a course of conduct planned to culminate in his commission of the crime"); KRS 506.010(4)(d) (providing that an attempt to commit a Class D felony results in a Class A misdemeanor).

"profiting from prostitution" requires that someone other than the prostitute *receives proceeds* from the prostitution, as opposed to encompassing a patron *paying* for the services of a prostitute.

The crime of prostitution in KRS 529.020 (a Class B misdemeanor) does not apply to criminalize the actions of a "John" either. As explained in the 1974 Crime Commission/LRC Commentary to KRS 529.020, "[p]atronizing a prostitute is not made a criminal offense under this statute." It appears that since the repeal in 1974 of KRS 436.075 (which made soliciting a prostitute a misdemeanor), a "John" fails to commit any crime by merely soliciting a prostitute.

While certainly we want to protect our children from potential predators, pursuing a prosecution for unlawful use of electronics would have accomplished just that, but without a mandatory fee or the need to register as a sexual offender.[3] There is irony in the fact that conduct that cannot constitute promoting prostitution can constitute promoting human trafficking. I find it troubling that the Commonwealth chose to pursue an additional charge that did not fit Jeffreys's behavior, in a way that does not appear to have been within the contemplation of the General Assembly in enacting such a law. It makes no sense to recriminalize soliciting prostitution, which was never more than a misdemeanor, into a Class C or Class D felony of promoting human

[3] *See* KRS 17.500(3)(a)6, (5), (8), (9) (categorizing KRS 529.110 "[p]romoting human trafficking involving commercial sexual activity" as both a "criminal offense against a victim who is a minor" if a minor victim is involved, and as a "sex crime" which makes someone who pleads to or is convicted of such crimes a "sexual offender" and "registrant").

trafficking which includes a mandatory $10,000 "human trafficking victims service fee."

II. The "Human Trafficking Victims Service Fee" as Applied to Jeffreys's Actions is Grossly Disproportionate and Violates the Eighth Amendment Prohibition Against Excessive Fees.

I am further troubled that in the Commonwealth choosing to prosecute a "John" for promoting human trafficking, Jeffreys became subject to an oppressively large fine (termed "human trafficking victims service fee") of $10,000 pursuant to KRS 529.130, and the mandatory nature of such fee deprived the trial court of any discretion to impose a lesser fee based upon the level of harm caused by his actions or his inability to pay. Although Jeffreys entered into a plea agreement and pled guilty to promoting human trafficking, I do not believe this impacts our ability to review the propriety of such an excessive fee. No negotiation was possible regarding the fee which was mandated to be exactly $10,000 per the statute, whether Jeffreys pled guilty to this lesser included offense or was convicted by a jury as originally indicted.

The Eighth Amendment of United States Constitution prohibits the imposition of "excessive fines," and it applies to our Commonwealth through the Fourteenth Amendment's Due Process Clause. *Timbs v. Indiana*, 586 U.S. 146, 150 (2019). "The term 'fine' [in the Eighth Amendment] refers to punishment for a criminal offense." *Tillman v. Lebanon Cnty. Correctional Facility*, 221 F.3d 410, 420 (3d Cir. 2000). Although it is called a "fee," the "human trafficking victims service fee" is in fact a punishment that in constitutional parlance is considered a "fine." I recognize that our statutes

make distinctions between fees, fines, and forfeitures, but the Constitution makes no such distinctions.

"Despite the broad discretion that States possess with respect to the imposition of criminal penalties and punitive damages, the Due Process Clause of the Fourteenth Amendment to the Federal Constitution imposes substantive limits on that discretion." *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 433 (2001). The purpose of the Eighth Amendment is primarily the prevention of "governmental abuse of its 'prosecutorial' power," *Browning-Ferris Industries of Vermont, Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 266 (1989).

In *United States v. Bajakajian*, 524 U.S. 321, 334 (1998), the Court "[held] that a punitive forfeiture violates the Excessive Fines Clause if it is grossly disproportional to the gravity of a defendant's offense." The Court explained that this proportionality determination by the trial court must be reviewed *de novo* by appellate courts, with the trial and appellate courts being required to "compare the amount of the forfeiture to the gravity of the defendant's offense. If the amount of the forfeiture is grossly disproportional to the gravity of the defendant's offense, it is unconstitutional." *Id.* at 336–37.

In applying such a standard to a respondent's failure to report to the United States government that the respondent was taking more than $10,000 in cash out of the county, the Court in *Bajakajian* concluded that requiring forfeiture of the entire amount being removed would be excessive and violate the Eighth Amendment as this was "solely a reporting offense" and the

"violation was unrelated to any other illegal activities[.]" *Id.* at 339. The Court deemed it important that "[w]hatever his other vices, respondent does not fit into the class of persons for whom the statute was principally designed[,]" noted that "[t]he harm that respondent caused was also minimal" and "affected only one party, the Government," and the size of the fine sought "bears no articulable correlation to any injury suffered by the Government." *Id.* at 337–40.

In considering whether the Eighth Amendment prohibited excessive punitive damages in a civil case, in *Cooper Industries, Inc.*, the Court relied on *Bajakajian* and two other cases interpreting the Eighth Amendment and synthesized how these standards applied to any Eighth Amendment case:

> In these cases, the constitutional violations were predicated on judicial determinations that the punishments were grossly disproportional to the gravity of defendants' offenses. We have recognized that the relevant constitutional line is inherently imprecise rather than one marked by a simple mathematical formula. But in deciding whether that line has been crossed, we have focused on the same general criteria: the degree of the defendant's reprehensibility or culpability; the relationship between the penalty and the harm to the victim caused by the defendant's actions; and the sanctions imposed in other cases for comparable misconduct. Moreover, and of greatest relevance for the issue we address today, in each of these cases we have engaged in an independent examination of the relevant criteria.

Cooper Industries, Inc., 532 U.S. at 434–35 (quotation marks, notated alterations, and internal citations omitted).

While *Bajakajian* concerned a criminal forfeiture, and *Cooper Industries, Inc.* concerned the imposition of civil punitive damages, they both applied the same criteria in determining whether the Eighth Amendment was violated.

Accordingly, these criteria must also apply to determining whether a punitive fine or fee violates the Eighth Amendment, as must our own standards which we have applied to forfeiture cases in accordance with this precedent.

In *Hinkle v. Commonwealth*, 104 S.W.3d 778, 782 (Ky. App. 2002), the Court of Appeals concluded in adjudging whether a forfeiture offended the Eighth Amendment that "[a]mong the factors relevant to this determination are the gravity of the offense, the potential penalties, the actual sentence, sentences imposed for similar crimes in this and other jurisdictions, and the effect of the forfeiture on innocent third parties." The Court remanded for the trial court to consider whether a $55,000 forfeiture was excessive where the defendant had only committed a misdemeanor. *Id.* at 783.

I conclude that a $10,000 fee is grossly excessive and, therefore, violates the Eighth Amendment prohibition against excessive fines as it was applied to Jeffreys's behavior. After being contacted by an undercover agent who claimed to be sixteen, Jeffreys solicited her for sex. However, there was no victim to his crime because the undercover agent was not a minor and was not going to have sex with him for money. *See* KRS 529.010(16) (defining a "victim of human trafficking" as "a person who has been subjected to human trafficking"). This fact is a valid consideration in determining whether the fee imposed passes constitutional muster.

In a different context, regarding restitution to be ordered to a victim of child pornography pursuant to Title 18 United States Code (U.S.C.) § 2259(a), in *Paroline v. United States*, 572 U.S. 434, 445 (2014), the Court concluded that

"if the defendant's offense conduct did not cause harm to an individual, that individual is by definition not a 'victim' entitled to restitution under § 2259." The Court additionally concluded it would raise Eighth Amendment issues to require one perpetrator out of many to pay for all of a victim's losses. *Paroline*, 572 U.S. at 455-56.

In ordering Jeffreys to pay $10,000 for promoting human trafficking where there is no victim, he is essentially being ordered to pay for the harm done to actual victims of human trafficking by other people, without regard to the fact that he did not harm anyone. Jeffrey's conduct should have been appropriately addressed under the original charge for unlawful use of electronic means. The eventual charge he pled to constitutes a legal fiction that did not encompass his conduct.

Jeffreys also failed to pose a particular risk to the public, a fact that both the Commonwealth and trial court recognized. This is evidenced by the Commonwealth's recommendation that Jeffreys be sentenced to one year of incarceration and the trial court's decision (after it considering Jeffreys's PSI report which indicated he had no previous record other than traffic offenses) to impose a one-year sentence, probated. Therefore, it is difficult to understand how a mandatory fee of this size can be warranted. Additionally, Jeffreys needs to be able to support his children, as was mentioned at sentencing, and the requirement of paying this sizable fee puts his ability to do so in jeopardy.

While there certainly may be situations where a $10,000 fee is appropriate based on how victims have been impacted and the serious nature

of the facts, the fact that trial courts are given no discretion to impose an appropriate fee means that in some dispositions the Eighth Amendment will be violated. This is one of those situations in which the imposition of the fee mandated by statute is grossly disproportionate to the crime committed. Accordingly, I would reverse and remand for the trial court to determine what fee amount would not offend the Eighth Amendment's prohibition on excessive fines.

III. The "Human Trafficking Victims Service Fee" is Grossly Excessive Compared to other Statutory Fees.

Finally, I am troubled that the General Assembly's decision to impose a one-size fits-all very sizeable "human trafficking victims service fee" for committing human trafficking or promoting human trafficking as set out in KRS 529.130. The Commonwealth's decision to prosecute Jeffreys for such a crime regardless of its ill-fit to the facts, resulted in a conviction with the funds to be given to the Attorney General for a discretionary distribution.[4] This has the appearance of "cash register justice" with all its concomitant injustice. *See generally*, Morgan King, *Paying to Punish: How Criminal Legal Debt in Kentucky Extends Beyond the Proportionate Punishment*, 109 Ky. L.J. 767 (2021); Laura I. Appleman, *Nickel and Dimed into Incarceration: Cash-Register Justice in the Criminal System*, 57 B.C.L. Rev. 1483 (2016); Cortney E. Lollar, *Eliminating the Criminal Debt Exception for Debtors' Prisons*, 98 N.C.L. Rev. 427 (2020).

[4] *See* KRS 529.140 and 40 Kentucky Administrative Regulations (KAR) 6:030.

This "human trafficking victims service fee" is unlike any other fees that defendants are statutorily required to pay. Most fees are directly related to the services defendants, inmates, and probationers receive and all allow the judiciary to adjust them based on the defendant's ability to pay. *See* KRS 534.045 (jail reimbursement fee, consideration given to ability to pay, the defendant's income and any change in the defendant's financial status); KRS 533.025(2) (work release fees); KRS 533.030(2)(l) and (3)(b) (conditions of probation requiring payment for drug testing but allowing waiver of such cost "[f]or good cause shown" and 5% fee added to restitution to defray administrative costs of collecting it); KRS 533.250(7) (pretrial diversion supervision fee, which can be waived for indigency or reduced based on ability to pay); KRS 532.100(9)(c) (community work program/work release fee); KRS 532.210(5) (home incarceration fee).

The next highest comparative fee to the "human trafficking victims service fee" is the current $425 fee imposed by KRS 189A.050(1) for persons convicted of certain driving under the influence (DUI) violations, but even this DUI fee is subject to KRS 534.020 and KRS 534.060, and such funds have very specific allocations and purposes. The "human trafficking victims service fee," in contrast, contains no basis for adjustment based on inability to pay and the statute grants the Attorney General discretion as to allocations of the collected funds. By comparison, the Crimestoppers fee is only $1, which is to be added to court costs. KRS 431.597(4).

In enacting KRS 529.130, the General Assembly made the "human trafficking victims service fee" mandatory. Our Courts were wholly denied of any discretion to adjust the amount of this exorbitant fee, no matter how compelling the reason. Instead, the law obligates the judiciary to bring the might of the criminal justice collection system to bear in attempting to collect this fee from all offenders, even if they completely lack the ability to pay it. Therefore, the fee must be imposed even on a hypothetical wheelchair-bound amputee who shelters every night at the Salvation Army.

Although *Bearden v. Georgia,* 461 U.S. 660, 672-73 (1983), prohibits revocation of probation based on inability to pay, the situation is somewhat different for the working poor or those with a moderate income who must support dependents. While I make no judgment as to whether Jeffreys could afford to pay this fee, I observe that a probationer who fears that he may face prison time if he does not pay the ordered amount due as scheduled, is put in a difficult situation which could be greatly alleviated if the trial court could make an initial judgment regarding his financial situation and ability to pay.

Pursuant to KRS 534.020(3)(a)2, if the trial court concluded that Jeffreys's failure to pay was "willful" rather than the result of his "inability to pay," he could be jailed until he paid the amount due pursuant to KRS 534.070. Being jailed under such circumstances amounts to debtor's prison. *See generally* Christopher D. Hampson, *The New American Debtors' Prisons*, 44 Am. J. Crim. L. 1 (2016); Tyler B. Myers, *Prison or Payment? Benthamism, the Modern Debtors' Prison, and Its Historical Roots*, 8 Wash. U. Jurisprudence Rev.

263 (2016); *Indigent, in Debt, and Incarcerated: The New American Debtors' Prison*, Hum. Rts. Brief, Spring 2015, at 6 (2015).

Accordingly, I would reverse.

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