

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

FOR PUBLICATION
May 28, 2013
9:00 a.m.

v

FREDERICK LAWRENCE CUNNINGHAM,

Defendant-Appellant.

No. 309277
Allegan Circuit Court
LC No. 11-017200-FH

AFTER REMAND

Before: FITZGERALD, P.J., and O'CONNELL and SHAPIRO, JJ.

O'CONNELL, J.

This matter returns to us following our remand to the sentencing court to determine whether the \$1,000 in court costs imposed in defendant's sentence was reasonable for felony cases in Allegan Circuit Court. *People v Cunningham*, unpublished order of the Court of Appeals, entered October 2, 2012 (Docket No. 309277). We conclude that the prosecutor established a sufficient factual basis for the amount of costs imposed and accordingly affirm.

Defendant's sentence arose from his guilty plea to obtaining a controlled substance by fraud, MCL 333.7407(1)(c). He was sentenced to one to four years' imprisonment and \$1,000 in court costs, as well as other costs and fees. In keeping with our remand order, the sentencing court held a hearing and received evidence that the average actual court cost for criminal cases in the Allegan Circuit Court is \$1,238.48. Based on that figure, the sentencing court found that there was a reasonable relationship between the \$1,000 in imposed court costs and the actual costs incurred. Defendant does not challenge that finding on appeal.

Instead, defendant contends that the sentencing court erred by (1) including in its calculation the expenses associated with maintaining governmental agencies; and (2) failing to calculate the particular costs incurred in this case. We disagree with both of defendant's contentions.

The controlling law establishes that a sentencing court may consider overhead costs when determining the reasonableness of a court cost figure. In this case, the sentencing court imposed costs under MCL 769.1k, which provides, in relevant part:

(1) If a defendant enters a plea of guilty . . . both of the following apply at the time of the sentencing or at the time entry of judgment of guilt is deferred pursuant to statute or sentencing is delayed pursuant to statute:

(a) The court shall impose the minimum state costs as set forth in section 1j [MCL 769.1j] of this chapter.

(b) The court may impose any or all of the following:

(i) Any fine.

(ii) Any cost in addition to the minimum state cost set forth in subdivision (a).

(iii) The expenses of providing legal assistance to the defendant.

(iv) Any assessment authorized by law.

(v) Reimbursement under section 1f [MCL 769.1f] of this chapter.

In *People v Sanders*, 296 Mich App 710; 825 NW2d 87 (2012), this Court determined that the statute does not preclude a sentencing court from considering overhead costs when determining the amount of costs to impose. *Id.* at 714. The *Sanders* decision thus confirms that the sentencing court in this case properly considered indirect expenses in determining whether the amount designated as court costs was reasonable.

Sanders also establishes that a sentencing court need not calculate particularized court costs in every criminal case. In the initial *Sanders* opinion, this Court held that MCL 769.1k(1)(b)(ii) allows a sentencing court to impose reasonable costs against an offender without separately calculating the particular costs of the offender's case. 296 Mich App at 711. In the subsequent opinion affirming the assessment of \$1,000 in costs, the Court explained the flaw in the alternate, particularized approach that defendant espouses in this case:

[W]e would be hesitant to uphold an approach that would take into account whether the case was resolved by a plea or by a trial. If we embraced defendant's argument that costs should be less in a case resolved by a plea that only took "25 minutes of court time" rather than by a trial, there would be a realistic concern that we would be penalizing a defendant for going to trial rather than pleading guilty. That is, a system where greater costs were imposed on a defendant who went to trial rather than plead guilty or nolo contendere would create a financial incentive for a defendant to plead rather than face the possibility of even greater court costs being imposed for exercising his or her constitutional right to a trial. [*People v Sanders (After Remand)*, 298 Mich App 105, 108; 825 NW2d 376 (2012).]

In sum, we find no error warranting reversal in the sentencing court's assessment of costs in this case.

Affirmed.

/s/ Peter D. O'Connell
/s/ E. Thomas Fitzgerald