

[Cite as *State v. Fountain*, 2018-Ohio-5357.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 106995

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**CARL FOUNTAIN**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
AFFIRMED

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-15-597616-A

**BEFORE:** E.A. Gallagher, A.J., Jones, J., and Keough, J.

**RELEASED AND JOURNALIZED:** December 27, 2018

## **FOR APPELLANT**

Carl Fountain  
Inmate No. 680090  
Lake Erie Correctional Institution  
P.O. Box 8000  
Conneaut, Ohio 44030

## **ATTORNEYS FOR APPELLEE**

Michael C. O'Malley  
Cuyahoga County Prosecutor  
BY: Christopher B. Schroeder  
Assistant Prosecuting Attorney  
The Justice Center, 9th Floor  
1200 Ontario Street  
Cleveland, Ohio 44113

EILEEN A. GALLAGHER, A.J.:

{¶1} Defendant-appellant Carl Fountain appeals the denial of his motion to vacate court costs and fines in the Cuyahoga County Court of Common Pleas. For the following reasons, we affirm.

### **Facts and Procedural History**

{¶2} In 2015, Fountain pled guilty to felonious assault and robbery. As part of his sentence the trial court entered judgment against Fountain in an amount equal to the costs of prosecution. On January 11, 2018 Fountain filed a “motion to vacate court cost and fines” wherein he argued that the trial court failed to orally advise him of his obligation to pay court costs at his sentencing hearing before imposing them in his sentencing entry. The trial court denied Fountain’s motion.

### **Law and Analysis**

{¶3} In his sole assignment of error, Fountain argues that pursuant to *State v. Joseph*, 125 Ohio St.3d 76, 2010-Ohio-954, 926 N.E.2d 278, it was error for the trial court to order him to pay costs in its sentencing entry when it did not do so at the sentencing hearing. We are unable to confirm whether or not the trial court addressed court costs at sentencing because the sentencing transcript is not part of our record. However, the transcript is unnecessary because “*Joseph* is no longer good law.” *State v. Beasley*, 153 Ohio St.3d 497, 2018-Ohio-493, 108 N.E.3d 1028, ¶ 263. The trial court “retains jurisdiction to waive, suspend, or modify the payment of the costs of prosecution \* \* \* at the time of sentencing or at any time thereafter.” (Emphasis deleted.) *Id.* at ¶ 265, citing R.C. 2947.23(C). As such, Fountain can move the court at any time to waive the payment of costs. A remand from this court is not required. *See Beasley* at ¶ 265; *State v. Reed*, 8th Dist. Cuyahoga No. 106796, 2018-Ohio-3187.

{¶4} We note that Fountain’s arguments both in his motion to the trial court and on appeal are limited to the trial court’s alleged error in failing to orally impose costs at sentencing. Therefore, any examination of the trial court’s discretion in denying a waiver of costs in this case is beyond the scope of the present appeal.

{¶5} Fountain’s sole assignment of error is overruled.

{¶6} The judgment of the trial court is affirmed.

It is ordered that appellee recover from appellant the costs herein taxed.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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EILEEN A. GALLAGHER, ADMINISTRATIVE JUDGE

LARRY A. JONES, SR., J., and  
KATHLEEN ANN KEOUGH, J., CONCUR