

[Cite as *State v. Threatt*, 2004-Ohio-3261.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

MICHELLE THREATT

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Sheila G. Farmer, J.

Hon. Julie A. Edwards, J.

Case No. 2003CA00368

OPINION

CHARACTER OF PROCEEDING: Appeal from the Stark County Court of
Common Pleas, Case No. 2003CR884

JUDGMENT: Reversed and Remanded

DATE OF JUDGMENT ENTRY: 6/21/2004

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Hoffman, P.J.

{¶1} Defendant-appellant Michelle Threatt appeals the September 25, 2003, and October 15, 2003 Judgment Entries entered by the Stark County Court of Common Pleas, which denied her motions to waive court costs and vacate the order of garnishment. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On August 5, 2003, the Stark County Grand Jury indicted appellant on one count of theft, in violation of R.C. 2913.02(A)(1), a felony of the fifth degree; and one count of possession of criminal tools, in violation of R.C. 2923.24(A), a felony of the fifth degree. Appellant entered a plea of not guilty to the indictment at her arraignment on August 8, 2003. On August 13, 2003, appellant appeared before the trial court and withdrew her former pleas of not guilty and entered pleas of guilty to both counts contained in the indictment. The trial court sentenced appellant to a period of seven months incarceration on each count and ordered the counts be served concurrently. The trial court ordered appellant to pay costs of the prosecution. The trial court memorialized the change of plea and sentence via Judgment Entry filed August 15, 2003.

{¶3} Subsequently, on September 23, 2003, appellant filed a Motion to Waive Court Costs, which the trial court denied via Judgment Entry filed September 25, 2003. On October 9, 2003, appellant filed a Motion to Vacate Order of Garnishment, which the trial court also denied via Judgment Entry filed October 15, 2003.

{¶4} It is from the September 23, 2003, and October 15, 2003 Judgment Entries appellant appeals, raising the following assignments of error:

{¶5} “I. THE TRIAL COURT ERRED IN FAILING TO WAIVE COURT COSTS WHERE THE DEFENDANT FILED AN UNCONTESTED AFFIDAVIT OF INDIGENCY.

{¶6} “II. THE TRIAL COURT ERRED IN FAILING TO WAIVE COURT COSTS BY MEANS OF VACATING THE ORDER OF GARNISHMENT WHERE THE DEFENDANT IS INDIGENT.”

I, II

{¶7} Based upon this Court’s decision in *State v. Glosser* (Jun. 7, 2004), Stark App. No. 2003CA00374, unreported, we sustain appellant’s assignments of error. The judgment of the Stark County Court of Common Pleas is reversed and the matter remanded to the trial court for further proceedings consistent with this opinion and the law.

By: Hoffman, P.J.

Farmer, J. and

Edwards, J. concur

JUDGES

