

[Cite as *State v. Carter*, 2004-Ohio-3523.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	William B. Hoffman, P.J.
Plaintiff-Appellee	:	Sheila G. Farmer, J.
	:	Julie A. Edwards, J.
-vs-	:	
	:	Case No. 2003-CA-00372
RONALD CARTER	:	
	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Criminal Appeal From Stark County Court
of Common Pleas Case 2003-CR-0635

JUDGMENT: Vacated and Remanded

DATE OF JUDGMENT ENTRY: June 28, 2004

APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellant

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Edwards, J.

{¶1} Defendant-appellant Ronald Carter appeals from the September 25, 2003, and October 15, 2003, Judgment Entries of the Stark County Court of Common Pleas. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On June 2, 2003, appellant was indicted on one count of robbery, pursuant to R.C. 2911.02, and one count of carrying a concealed weapon, pursuant to R.C. 2923.12. On June 18, 2003, appellant pled guilty to those offenses and was sentenced to a three year prison term.

{¶3} On September 23, 2003, appellant filed a written motion to waive court costs. An affidavit of indigency was filed with the motion. The affidavit was uncontested. On September 25, 2003, the trial court denied the motion to waive court costs.

{¶4} On October 9, 2003, appellant requested that the trial court suspend the court costs by filing a motion to vacate the order of garnishment. By Judgment Entry filed October 15, 2003, the trial court denied appellant's motion to vacate the order of garnishment.

{¶5} Thus, it is from the September 25, 2003, and October 15, 2003, judgment entries that appellant appeals, raising the following assignments of error:

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

{¶7} THE TRIAL COURT ERRED IN FAILING TO WAIVE COURT COSTS BY MEANS OF VACATING THE ORDER OF GARNISHMENT WHERE THE DEFENDANT IS INDIGENT."

{¶8} Appellant, in his first assignment of error, argues that the trial court erred in failing to waive court costs since appellant filed an uncontested affidavit of indigency. In his second assignment of error, appellant asserts that, since appellant is indigent, the trial court erred in failing to waive court costs by means of vacating the order of garnishment.

{¶9} However, the first issue that must be addressed is whether appellant's appeal was timely filed. The State argues that the appeal time attaches to the actual sentencing entry, and therefore, appellant's failure to appeal from that entry renders it res judicata. We disagree.

{¶10} Revised Code 2949.14 governs the cost bill in felony cases. That statute states as follows:

{¶11} "Upon conviction of a nonindigent person for a felony, the clerk of the court of common pleas shall make and certify under his hand and seal of the court, a complete itemized bill of the costs made in such prosecution, including the sum paid by the board of county commissioners, certified by the county auditor, for the arrest and return of the person on the requisition of the governor, or on the request of the governor to the president of the United States, or on the return of the fugitive by a designated agent pursuant to a waiver of extradition except in cases of parole violation. Such bill of costs shall be presented by such clerk to the prosecuting attorney, who shall examine each item therein charged and certify to it if correct and legal. Upon certification by the prosecuting attorney, the clerk shall attempt to collect the costs from the person convicted."

{¶12} This statute carries a direct mandate to the clerk of court to prepare an itemized bill of the costs for nonindigent defendants. It does not prohibit the clerk of courts from preparing an itemized bill of the costs for indigent defendants. We conclude R.C. 2949.14 does not make the preparation of an itemized bill of the costs against indigent defendants illegal.

{¶13} Most trial courts order costs to be assessed in their original judgment entries.¹ If an itemized cost bill is prepared by the clerk of courts, the specific amount due is generally not put into a judgment entry. Thus, there is no order of the court to pay a specific amount for court costs until there is an attempt to collect the costs by levy or garnishment. Provided that such procedure is used by the trial court as it was in the case sub judice, then the time for appeal does not begin to run until there is an attempt to levy or garnish. We find this to be consistent with this court's decision in *State v. Durenda*, Stark App. No. 2003CA00336, 2004-Ohio-1292, and *State v. Chambers*, Stark App. No. 2003CA00337, 2004-Ohio-1279. Thus, appellant's appeal sub judice was timely filed.

{¶14} We note, however, that if a trial court would, for some reason, enter the specific amount of costs due into a judgment entry prior to a levy or garnishment attempt, then the appeal time to challenge the amount of the judgment would begin to run from the time of the entry. In addition, any time that the court renders a judgment as to a defendant's indigency status, a new final appealable order exists.

{¶15} We now turn to appellant's assignments of error. As is stated above, appellant, in his first assignment of error, argues that the filing of an uncontested

¹ Appellant does not dispute that R.C. 2947.23 requires a trial court to assess court costs against a defendant, indigent or not.

affidavit of indigency precludes collection of court costs. At the outset, it is necessary to point out that "once indigent" does not mean "always indigent." It is very possible that after an indigent defendant is convicted and sentenced, the defendant may become solvent, for example through employment, lottery winnings, inheritance or award. Therefore, just because an affidavit of indigency is filed during the course of the proceedings, it does not mean the defendant keeps the indigent status forever. The financial status of each defendant at the time of collection or garnishment for court costs must be determined from the facts of each particular case.

{¶16} In the case sub judice, appellant was sentenced to a term of three years in prison pursuant to a Judgment Entry filed on June 20, 2003. He then filed his motion to waive court costs and an affidavit of indigency on September 23, 2003. No evidence contra to the affidavit was filed and the trial court denied that motion on September 25, 2003. On October 9, 2003, appellant filed a motion to vacate the order of garnishment to collect court costs. As memorialized in a Judgment Entry filed on October 15, 2003, the trial court denied that motion.

{¶17} Appellant argues that the provisions of R.C. 2949.14 et seq. are applicable only to nonindigent defendants. In reviewing the statute, we find it is included within the Chapter's subdivision titled "Transportation of Felons; Costs." R.C. 2949.14 mandates collection from nonindigent felons only. R.C. 2949.19 provides for reimbursement of transportation costs by the state public defender for indigent defendants.

{¶18} We therefore conclude it was the sole intent of the Ohio General Assembly to permit collection and garnishment for court costs against nonindigent

felons only. The statute does not provide collection against indigent felons such as appellant. See *State v. Glosser*, Stark App. No. 2003CA00374, 2004-Ohio-2966; *State v. Cantwell*, Stark App. No. 2003CA00367, 2004-Ohio-2964; *State v. Olson*, Stark App. No. 2003CA00371, 2004-Ohio-2965.

{¶19} It is the trial court's decision to determine if a felon is indigent at the time of collection. In this case, the trial court ruled without response from the state on the issue of appellant's indigency status in violation of Loc.R. 10.03 of the Court of Common Pleas of Stark County, General Division and Crim.R. 47. It is not fair at this juncture to say that the affidavit of indigency was uncontested.

{¶20} For the foregoing reasons, the trial court's judgment is vacated and the matter is remanded for a determination by the trial court on the indigency status of appellant. If the trial court finds appellant to be indigent, then the garnishment is unlawful.² In the alternative, if the trial court finds appellant not to be indigent, then the garnishment is lawful.

{¶21} Accordingly, the judgment of the Court of Common Pleas of Stark County, Ohio is hereby vacated and this matter is remanded to the trial court for further proceedings.

By: Edwards, J.

Hoffman, P.J. and

Farmer, J. concur

² The fact that the trial court determines a defendant is indigent at the particular point in time that a garnishment is ordered, thereby rendering that garnishment unlawful, does not preclude a subsequent attempt(s) to garnish as the defendant's indigency status may change.

JUDGES

JAE/0609

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

RONALD CARTER

Defendant-Appellant

JUDGMENT ENTRY

CASE NO. 2003-CA-00372

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Stark County Court of Common Pleas is hereby vacated and this matter is remanded to the trial court.

JUDGES