

[Cite as *State v. Wagner* , 2010-Ohio-6560.]

COURT OF APPEALS  
PERRY COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

JOHN H. WAGNER

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Sheila G. Farmer, J.

Hon. Patricia A. Delaney, J.

Case No. 10-CA-10

OPINION

CHARACTER OF PROCEEDING: Perry County Court of Common Pleas,  
Case No. 09-CR-72

JUDGMENT: Vacated, in part, and remanded

DATE OF JUDGMENT ENTRY: December 29, 2010

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

JOSEPH A. FLAUTT  
Prosecuting Attorney

CLAIRE R. CAHOON  
Assistant State public Defender

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*Hoffman, P.J.*

{¶1} Defendant-appellant John H. Wagner appeals his conviction and sentence entered by the Perry County Court of Common Pleas. Plaintiff-appellee is the State of Ohio.

#### STATEMENT OF THE CASE AND FACTS

{¶2} On October 22, 2009, Appellant was indicted by the Perry County Grand Jury on four counts of trafficking in cocaine, violations of R.C. 2925.03(A)(1) and (C)(4)(a), felonies of the fifth degree. Following a jury trial, Appellant was found guilty of all counts.

{¶3} The trial court sentenced Appellant to eight months incarceration, and suspended his driver's license for five years. The court waived Appellant's fines due to his indigency. The trial court did not inform Appellant of court costs during the sentencing hearing, but did include costs in the sentencing entry.

{¶4} Appellant now appeals, assigning as error:

{¶5} "I. THE TRIAL COURT ERRED BY IMPOSING COURT COSTS IN ITS JUDGMENT ENTRY, WITHOUT NOTIFYING MR. WAGNER OF THE COSTS AT HIS SENTENCING HEARING OR THAT FAILURE TO PAY COURT COSTS MAY RESULT IN THE COURT'S ORDERING HIM TO PERFORM COMMUNITY SERVICE. STATE V. JOSEPH, 125 OHIO ST.3d 76, 2010-OHIO-954."

{¶6} The Ohio Supreme Court addressed this issue in *State v. Joseph*, 125 Ohio St.3d 76, 2010-Ohio-954, and held a trial court commits error by imposing court

costs in its sentencing entry when it did not impose those costs in open court at the sentencing hearing. The court further held the error did not void defendant's entire sentence, but mandated a remand for the limited purpose of allowing defendant to move the trial court for a waiver of the payment of court costs.

{¶7} Appellant further maintains the trial court erred in failing to notify him failure to pay court costs could result in community service.

{¶8} R.C. 2947.23 states,

{¶9} “(A)(1) In all criminal cases, including violations of ordinances, the judge or magistrate shall include in the sentence the costs of prosecution, including any costs under section 2947.231 of the Revised Code, and render a judgment against the defendant for such costs. At the time the judge or magistrate imposes sentence, the judge or magistrate shall notify the defendant of both of the following:

{¶10} “(a) If the defendant fails to pay that judgment or fails to timely make payments towards that judgment under a payment schedule approved by the court, the court may order the defendant to perform community service in an amount of not more than forty hours per month until the judgment is paid or until the court is satisfied that the defendant is in compliance with the approved payment schedule.

{¶11} “(b) If the court orders the defendant to perform the community service, the defendant will receive credit upon the judgment at the specified hourly credit rate per hour of community service performed, and each hour of community service performed will reduce the judgment by that amount.”

{¶12} This Court has previously held in *State v. Dansby*, 2009-Ohio-2975, failure to advise a criminal defendant about community service is reversible error.

{¶13} Pursuant to *Joseph*, supra, and *Dansby*, supra, this matter is remanded to the trial court for the limited purpose of allowing Appellant to move the trial court for a waiver of the payment of court costs, and if denied, to inform Appellant of the consequences of failing to pay court costs.

{¶14} The February 16, 2010 Judgment Entry of the Perry County Court of Common Pleas is vacated, in part, and the matter remanded to the trial court for further proceedings in accordance with this Opinion and the law.

By: Hoffman, P.J.

Farmer, J. and

Delaney, J. concur

s/ William B. Hoffman \_\_\_\_\_  
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer \_\_\_\_\_  
HON. SHEILA G. FARMER

s/ Patricia A. Delaney \_\_\_\_\_  
HON. PATRICIA A. DELANEY

IN THE COURT OF APPEALS FOR PERRY COUNTY, OHIO  
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-vs-

JOHN H. WAGNER

Defendant-Appellant

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JUDGMENT ENTRY

Case No. 10-CA-10

For the reasons stated in our accompanying Opinion, the February 16, 2010 Judgment Entry of the Perry County Court of Common Pleas is vacated, in part, and the matter remanded to the trial court for further proceedings in accordance with our Opinion and the law. Costs to Appellee.

s/ William B. Hoffman  
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer  
HON. SHEILA G. FARMER

s/ Patricia A. Delaney  
HON. PATRICIA A. DELANEY