

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. Patricia A. Delaney, P.J.
Plaintiff-Appellee	:	Hon. Craig R. Baldwin, J.
	:	Hon. Earle E. Wise, Jr., J.
-vs-	:	
	:	
STEVEN P. BUBENCHIK, JR.	:	Case No. 2019-CA-00178
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas, Case No. 2013-CR-1293

JUDGMENT: Affirmed

DATE OF JUDGMENT: March 27, 2020

APPEARANCES:

For Plaintiff-Appellee

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Wise, Earle, J.

{¶ 1} Defendant-Appellant Steven P. Bubenchik, Jr. appeals the November 15, 2019 judgment of the Court of Common Pleas, Stark County, Ohio which denied his motion to wave, suspend or modify the payment of court costs. Plaintiff-Appellee is the state of Ohio.

{¶ 2} Preliminarily, we note this case is before this Court on the accelerated calendar which is governed by App.R. 11.1. Subsection (E), determination and judgment on appeal, provides in pertinent part: “The appeal will be determined as provided by App.R. 11.1. It shall be sufficient compliance with App.R. 12(A) for the statement of the reason for the court's decision as to each error to be in brief and conclusionary form.”

{¶ 3} One of the important purposes of the accelerated calendar is to enable an appellate court to render a brief and conclusory decision more quickly than in a case on the regular calendar where the briefs, facts, and legal issues are more complicated. *Crawford v. Eastland Shopping Mall Assn.*, 11 Ohio App.3d 158, 463 N.E.2d 655 (10th Dist. 1983).

{¶ 4} This appeal shall be considered in accordance with the aforementioned rules.

FACTS AND PROCEDURAL HISTORY

{¶ 5} A recitation of the underlying facts is unnecessary for our resolution of this appeal. In 2013, Appellant was charged with three counts of attempted murder and three counts of felonious assault, all with repeat violent offender specifications and firearm specifications, and having weapons under disability. He was also charged in counts eight and nine of the indictment with two counts of rape. These charges were severed.

{¶ 6} Appellant opted to proceed to a jury trial on the first seven counts of the indictment. At the conclusion of his trial appellant was found guilty of one count of attempted murder, guilty of three counts of felonious assault, and guilty of having weapons under disability. He was sentenced to an aggregate total of 48 years incarceration. The state later amended count eight of the indictment to one count of sexual imposition and dismissed count nine. Appellant pled guilty to sexual imposition and at a second sentencing hearing was sentenced to 60 days and classified as a Tier III offender.

{¶ 7} Appellant directly appealed his convictions and sentence to this court which we affirmed on November 10, 2014.

{¶ 8} On December 28, 2018, Appellant filed a pro se motion to waive, suspend, or modify court costs. On November 15, 2019, the trial court denied the motion.

{¶ 9} Appellant filed an appeal, and the matter is now before this court for consideration. He raises one assignment of error:

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{¶ 10} "TRIAL COURT'S DENIAL OF THE DEFENDANT-APPELLANT'S MOTION TO WAIVE, SUSPEND OR MODIFY COURT COST, UNDER 2947.23(C) WAS AN ERROR OF OHIO LAW."

{¶ 11} In his sole assignment of error, appellant argues the trial court committed an error of law in denying his motion to waive, suspend, or modify court costs because it did not orally pronounce the same on the record, during sentencing. We disagree.

{¶ 12} Appellant relies on *State v. Joseph*, 125 Ohio St.3d 76, 2010-Ohio-954, 926 N.E.2d 278 to support his argument that the trial court was required to orally inform him at sentencing of its intention to impose court costs. In that matter, the Supreme Court held

that it is reversible error under Crim.R. 43(A) for a trial court to impose costs in its sentencing entry when it did not impose those costs in open court at the sentencing hearing. *Id.* at ¶ 22. The Court reasoned that the defendant was denied the opportunity to claim indigency and to seek a waiver of the payment of court costs before the trial court because the trial court did not mention costs at the sentencing hearing. *Id.*

{¶ 13} We have reviewed both sentencing hearing transcripts and find appellant was never advised of the imposition of court costs. We do not find, however, that remand is required as a case need not be remanded to the trial court in order for appellant to obtain an order waiving, suspending, or modifying costs as he has already attempted to do. *State v. Beasley*, 153 Ohio St.3d 497, 2018-Ohio-493, 108 N.E.3d 1028 ¶ 264 -265.

{¶ 14} Pursuant to R.C. 2947.23(C) a 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." A trial court's denial of a criminal defendant's motion to waive court costs is reviewed under an abuse of discretion standard. *State v. Threatt*, 108 Ohio St.3d 277, 2006-Ohio-905, 843 N.E.2d 164 ¶ 23. A trial court may waive payment of court costs upon a defendant's motion if the defendant is indigent. R.C. 2949.092; *State v. Walker*, 8th Dist. Cuyahoga No. 101213, 2014-Ohio-4841, ¶ 9. This discretion to waive costs, however, includes the discretion not to waive them, as the trial court did here. *State v. Gilbert*, 8th Dist. Cuyahoga No. 104355, 2016-Ohio-8308, ¶ 6. We find therefore, the trial court did not err as a matter of law.

{¶ 15} Appellant's sole assignment of error is overruled.

{¶ 16} The judgment of the Stark County Court of Common Pleas, Stark County Ohio, is affirmed.

By Wise, Earle, J.
Delaney, P.J. and
Baldwin, J. concur.

EEW/rw