

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
BELMONT COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

THOMAS EARL GRUBBA,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 18 BE 0028

Criminal Appeal from the
Court of Common Pleas of Belmont County, Ohio
Case No. 17-CR-186

BEFORE:

Cheryl L. Waite, Carol Ann Robb, David A. D'Apolito, Judges.

JUDGMENT:

Affirmed.

Atty. Dan Fry, Belmont County Prosecuting Attorney, 147-A West Main Street, St. Clairsville, Ohio 43950, for Plaintiff-Appellee, No Brief Filed.

Atty. Denise Ferguson, P.O. Box 26004, Akron, Ohio 44319, for Defendant-Appellant.

Dated: June 24, 2019

WAITE, P.J.

{¶1} Appellant Thomas Earl Grubba appeals a May 8, 2018 Belmont County Court of Common Pleas judgment entry convicting him of involuntary manslaughter. Appellant argues that the trial court improperly imposed costs of prosecution, supervision, and confinement without making a determination as to whether he is indigent. He also argues that the trial court failed to advise him that he cannot ingest or be injected with a drug while in prison and that he is subject to random drug testing. Pursuant to *State v. Price*, 2019-Ohio-500, -- N.E.3d -- (7th Dist.), Appellant's arguments are without merit and the judgment of the trial court is affirmed.

Factual and Procedural History

{¶2} On July 6, 2017, Appellant was indicted on one count of robbery, a felony of the second degree in violation of R.C. 2911.02(A)(2); one count of aggravated burglary, a felony of the first degree in violation of R.C. 2911.11(A)(1); one count of murder, an unclassified felony in violation of R.C. 2903.02(B); and complicity, an unclassified felony in violation of R.C. 2923.03(A)(1), (2), (3).

{¶3} The record reveals that on November 6, 2017, the trial court held a competency hearing. Two days later, the court determined "to a reasonable degree of scientific certainty that Defendant is not capable of understanding the legal proceedings against him and is unable to assist in his defense due to a mental illness." (11/8/17 J.E., p. 1.) Accordingly, the court determined Appellant was incompetent to stand trial.

{¶4} Although Appellant was initially deemed incompetent, his competency was restored at a later date. While the judgment entry restoring his competency is not included within the appellate record, Appellant's counsel acknowledged on the record at sentencing that competency had been restored.

{¶15} On March 16, 2018, Appellant pleaded guilty to an amended count of involuntary manslaughter. The robbery and aggravated burglary charges were dismissed. On May 18, 2018, the trial court sentenced Appellant to eleven years of incarceration. This timely appeal followed.

ASSIGNMENT OF ERROR NO. 1

THE TRIAL COURT COMMITTED REVERSIBLE ERROR AND PLAIN ERROR BY ORDERING DEFENDANT TO PAY THE COSTS OF THE PROSECUTION, SUPERVISION AND CONFINEMENT WITHOUT DETERMINING IF MR. GRUBBA WAS INDIGENT OR NOT.

{¶16} Appellant argues that the trial court improperly ordered him to pay the costs of prosecution, supervision, and confinement without determining whether he was indigent. Appellant seeks to have the matter remanded for the limited purpose of addressing whether he is indigent. The state failed to file a brief in this appeal.

{¶17} A sentencing court is required to enter a judgment against a defendant for the costs of prosecution as part of the sentence. However, the court can waive such costs if the defendant is indigent. R.C. 2947.23(A)(1)(a); *State v. White*, 103 Ohio St.3d 580, 2004-Ohio-5989, 817 N.E.2d 393, ¶ 14.

{¶18} We recently addressed this issue in *Price*. Appellant presents the exact same argument and relies on the same caselaw as the appellant in *Price*. See *State v. Joseph*, 125 Ohio St.3d 76, 2010-Ohio-954, 926 N.E.2d 278. As discussed in *Price*, *Joseph* is no longer good law. In 2014, R.C. 2947.23 was amended to state that “[t]he 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.” *Price* at ¶ 9. As the law allows a defendant to file a post-judgment motion seeking to waive costs after sentencing, a remand for resentencing is unnecessary. *Id.* In accordance with *Price*, Appellant’s first assignment of error is without merit and is overruled.

ASSIGNMENT OF ERROR NO. 2

THE TRIAL COURT COMMITTED REVERSIBLE ERROR AND PLAIN ERROR BY FAILING TO COMPLY WITH R.C. 2929.19(B)(2)(F).

{¶19} Appellant also argues that the trial court failed to advise him that he is not permitted to ingest or inject himself with a drug while in prison and that he is subject to random drug testing.

{¶10} R.C. 2929.19(B)(2)(f), on which Appellant predicates his second assignment of error, was deleted from the statute on October 29, 2018. The former R.C. 2929.19(B)(2)(f), applicable at the time of Appellant’s sentence, stated:

Subject to division (B)(3) of this section, if the sentencing court determines at the sentencing hearing that a prison term is necessary or required, the court shall do all of the following:

* * *

(f) Require that the offender not ingest or be injected with a drug of abuse and submit to random drug testing as provided in section 341.26, 753.33, or 5120.63 of the Revised Code, whichever is applicable to the offender who is serving a prison term, and require that the results of the drug test

administered under any of those sections indicate that the offender did not ingest or was not injected with a drug of abuse.

{¶11} We also addressed this issue in *Price*. In *Price*, we held “that the failure to notify a defendant of the requirements set forth in R.C. 2929.19(B)(2)(f) at the sentencing hearing does not constitute prejudicial error.” *Id.* at ¶ 14. As such, Appellant’s second assignment of error is without merit and is overruled.

Conclusion

{¶12} Appellant argues that the trial court improperly imposed costs of prosecution, supervision, and confinement without making a determination as to whether he is indigent. He additionally argues that the court failed to advise him that he cannot ingest or be injected with a drug while in prison and that he is subject to random drug testing. Pursuant to *Price*, Appellant’s arguments are without merit and the judgment of the trial court is affirmed.

Robb, J., concurs.

D’Apolito, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Belmont County, Ohio, is affirmed. Costs waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.