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COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO
2015 MAR 16 AM 11:28

BARBARA A. WEDENDEIN
CLERK OF COMMON PLEAS COURT
CLERMONT COUNTY, OH.

STATE OF OHIO :
Plaintiff : CASE NO. 2009 CR 00151
vs. : Judge McBride
JEFFREY LANE HALL : DECISION/ENTRY
Defendant :

Carol A. Rowe, assistant prosecuting attorney for the state of Ohio, 76 S. Riverside Drive, 2nd Floor, Batavia, Ohio 45103.

Jeffrey Lane Hall, *pro se* defendant, 425 Blackburn Avenue, Fairfield, Ohio 45014.

This cause is before the court for consideration of the "Motion for Indigent Person for court cost" filed by the defendant Jeffrey Lane Hall.

The defendant entered a plea of guilty to and was convicted of one count of Nonsupport of a Dependent in violation of R.C. 2919.21(B), a felony of the fifth degree.¹

¹ Judgment Entry Terminating Participation in Diversion Program, Finding Defendant Guilty of Offense Charged, and Sentencing Defendant to Community Control, filed February 24, 2010.

After his participation in the child support diversion program was terminated, the defendant was placed on a five-year term of community control.²

The defendant filed the present motion stating in pertinent part: "I the defendant do not have sufficient funds for the court costs. I am employed full time, however as you will find from the Probation departments (*sic*) living costs work sheet. It makes it impossible for me to Pay \$650 Per month against my child support arrears and pay the court costs also."³ The "living costs work sheet" referenced by the defendant was not attached to his motion.

R.C. 2947.23(A)(1) states in relevant part that "[i]n 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."

R.C. 2947.23(C) provides that "[t]he court retains jurisdiction to waive, suspend, or modify the payment of the costs of prosecution, including any costs under section 2947.231 of the Revised Code, at the time of sentencing or at any time thereafter."

The defendant did not submit an affidavit of indigency with the present motion. The defendant is not in prison and the court has no basis to determine that he is indigent at this time. However, even if the court were to find, for the purposes of considering the present motion, that the defendant is indigent, the Ohio Supreme Court in *State v. Threatt*, 108 Ohio St.3d 277, 2006-Ohio-905, 843 N.E.2d 164, reaffirmed its holding in *State v. White*, 103 Ohio St.3d 580, 2004-Ohio-5989, 817 N.E.2d 393, that

² Id.

³ Defendants (*sic*) Motion for Indigent Person for court cost, filed February 27, 2015.

"costs must be assessed against and may be collected from indigent defendants[.]"
under R.C. 2949.14.⁴

The court notes that, while the defendant was found to have violated his community control on two occasions, once in 2010 and once in 2012, he has had no violations since 2012.⁵ This would indicate that the defendant is either meeting his child support obligations or is at least making his best effort to pay all that he can after his necessary living expenses.

However, while the defendant's compliance with his community control sanctions is encouraging and a positive step, the court does not find this to be a basis to waive the court costs assessed against the defendant. The fact that the filing of this criminal case may have eventually resulted in the defendant complying with his legal obligations does not mean that the defendant should get the benefit of having the court costs waived. The fact remains that a court case had to be filed in order to induce the defendant to comply with his child support obligations.

The court finds no basis to waive, suspend or modify the payment of court costs as previously ordered. As a result, the court finds that defendant's motion is not well-taken and is hereby denied.

IT IS SO ORDERED.

DATED: 3-16-15



Judge Jerry R. McBride

⁴ *Threalt* at ¶¶ 1 and 10, citing *White* at ¶ 14.

⁵ Judgment Entry Finding Violation, Continuing Community Control, and Imposing More Restrictive Sanctions, filed August 25, 2010; and, Judgment Entry Finding Community Control Violation, Continuing Community Control, and Imposing More Restrictive Sanctions, filed April 30, 2012.