

**COURT OF COMMON PLEAS  
CLERMONT COUNTY, OHIO**

**FILED**  
**2014 DEC 23 PM 2:21**  
CLERK OF COURT  
COURT OF COMMON PLEAS  
CLERMONT COUNTY, OHIO

**STATE OF OHIO** :  
Plaintiff : **CASE NO. 2003 CR 00091**  
vs. : **Judge McBride**  
**SHAWN A. WALLINGFORD** : **DECISION/ENTRY**  
Defendant :

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

Shawn A. Wallingford, defendant appearing *pro se*, #A686073, Belmont Correctional Institution, P.O. Box 540, 68518 Bannock Road, St. Clairsville, Ohio 43950.

This cause is before the court for consideration of a motion to convert community service hours towards fines and/or costs filed on November 10, 2014.

The court filed a briefing order regarding the motion on November 18, 2014. When the final memorandum was filed pursuant to that briefing order, the court took the issues raised by the motion under advisement.

Upon consideration of the motion, the record of the proceeding, the written arguments of counsel and the *pro se* party, and the applicable law, the court now renders this written decision.

### FACTS OF THE CASE

On May 31, 2013, the defendant Shawn Wallingford was found to have violated several of his community control sanctions.<sup>1</sup> On June 6, 2013, the defendant was sentenced to a stated prison term of twenty-four months, consisting of prison terms of twelve months on each count of forgery in violation of R.C. 2913.31(A)(3) to be served consecutively.<sup>2</sup> In the sentencing entry setting forth the defendant's prison sentence, the court also ordered that the financial sanctions would remain the same as were originally determined.<sup>3</sup> The original and amended judgment entries sentencing the defendant to community control entered by Judge Robert Ringland, to whom the case was originally assigned, ordered that the defendant would be required to pay restitution in the amount of \$692.72, as well as court costs, court-appointed counsel fees, and a supervision fee of \$50.00 per month.<sup>4</sup>

The defendant now moves the court to convert his community service hours performed while imprisoned pursuant to the sentence rendered in this case towards the payment of fines and/or costs in this action.

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<sup>1</sup> Judgment Entry Finding Community Control Violation, Revoking Community Control, and Imposing a Prison Sentence, filed June 6, 2013.

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Judgment Entry of Sentence, filed February 4, 2008 and Amended Judgment Entry of Sentence, filed February 14, 2008.

## LEGAL ANALYSIS

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 was determined to be indigent by the Public Defender’s Office at the time of his arraignment in this case.<sup>5</sup> In the present motion, the defendant states that he included an affidavit of indigency along with the motion. It does not appear from the record of this case that such an affidavit was actually filed with the motion. However, it is logical to assume that the defendant is indigent given that he was indigent during the pendency of this case and is now serving a prison sentence. Due to the fact that it is not determinative of the outcome of this motion for the reasons set forth below, the court will assume for the purposes of this decision that the defendant is, in fact, indigent at this time.

R.C. 2947.23(A)(1) states as follows:

“(a) 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. If the judge or magistrate imposes a community control sanction or other nonresidential sanction, the judge or magistrate, when imposing the sanction, shall notify the defendant of both of the following:

(i) If the defendant fails to pay that judgment or fails to timely make payments towards that judgment under a payment

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<sup>5</sup> Order Appointing Counsel for Indigent Person, filed February 13, 2003 and Affidavit of Indigency, filed February 13, 2003.

schedule approved by the court, the court may order the defendant to perform community service until the judgment is paid or until the court is satisfied that the defendant is in compliance with the approved payment schedule.

(ii) 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.

(b) The failure of a judge or magistrate to notify the defendant pursuant to division (A)(1)(a) of this section does not negate or limit the authority of the court to order the defendant to perform community service if the defendant fails to pay the judgment described in that division or to timely make payments toward that judgment under an approved payment plan."

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 "costs must be assessed against and may be collected from indigent defendants" under R.C. 2949.14<sup>6</sup>

As set forth in the language of the statute above, this court has the ability, if the defendant fails to pay his court costs, to order that the defendant perform community service until the judgment is paid. However, the statute does not require the court to do so and instead simply allows that a court "may" do so, leaving that decision within the court's discretion.

The court ordered the payment of all court costs at the time of sentencing knowing that the defendant was indigent. This court ordered that the financial sanctions would remain the same as were originally determined when sentencing the defendant on his community control violation charge, knowing that he would be imprisoned for up

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<sup>6</sup> *Threatt* at ¶¶ 1 and 10, citing, *White* at ¶ 14.

to twenty-four months. The court sees no reason to revisit that decision. The defendant has already received the benefit while in prison of being able to perform such activities as "dog training," "reading books," and washing vehicles in the garage<sup>7</sup>, and the court sees no reason why the defendant should be given credit against his court costs for performing any such activities while imprisoned.

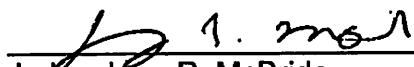
Based on the above analysis, the defendant's motion to convert community service hours towards fines and/or costs is not well-taken and shall be denied.

### CONCLUSION

The defendant's motion to convert community service hours towards fines and/or costs is not well-taken and is hereby denied.

**IT IS SO ORDERED.**

DATED: 12-23-14

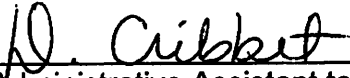
  
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Judge Jerry R. McBride

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<sup>7</sup> Inmate Community Service Info (attachment to Request to Convert Community Service Hours Towards Fines and/or Costs, filed November 10, 2014).

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the within Decision/Entry was e-mailed this ~~23~~<sup>22</sup>nd day of December 2014 to Carol A. Rowe, assistant prosecuting attorney, at crowe@clermontcountyohio.gov, and that a copy of the within Decision/Entry was mailed by regular U.S. Mail this 22<sup>nd</sup> day of December 2014 to Shawn A. Wallingford, #A686073, Belmont Correctional Institution, P.O. Box 540, 68518 Bannock Road, St. Clairsville, Ohio 43950.

  
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Administrative Assistant to Judge McBride