



## **Case Summary**

Jason R. Chilafoe (“Chilafoe”) pled guilty to one count of Criminal Recklessness, as a Class D felony. He appeals the trial court’s assessment of public defender fees and other court costs and fees.

We affirm.

## **Issue**

Chilafoe presents several issues for our review. We consolidate these issues into a single issue, whether the trial court erred in assessing fees and costs without first holding a hearing on and entering a finding as to whether Chilafoe was indigent.

## **Facts and Procedural History**

Chilafoe and a co-worker, Eddy Shatzer (“Shatzer”), got into an altercation, during which Shatzer suffered a severe head injury. Chilafoe was arrested and on March 11, 2010, the State charged him with Battery, as a Class C felony. At Chilafoe’s initial hearing that same day, the trial court found Chilafoe indigent, appointed a public defender to represent him, and ordered him held on bail pending execution of a \$50,000 bond, with 10% of the total bond amount to be paid in cash to the clerk of the court.

On March 12, 2010, Chilafoe posted a cash bond of \$5000, and signed a Cash Bail Bond Agreement (“the Bond Agreement”). The Bond Agreement provided that, if Chilafoe were convicted, “the Court may retain all or a part of the cash or securities paid by the Defendant to pay fines, costs, fees, restitution, publicly paid costs of representation, costs of extradition, and the fees required by Ind. Code § 35-33-8-3.2(d).” (App. 11.) The Bond

Agreement also stated that “cash bail shall be posted or receipted in the Defendant’s name only and shall be considered the personal asset of the Defendant,” not the personal property of any individual who loaned or gave money to Chilafoe to post the bond.<sup>1</sup> (App. 11.)

On August 27, 2010, pursuant to a plea agreement, the State amended the charging information, dismissing the Battery count and instead charging Chilafoe with Criminal Recklessness. Chilafoe pled guilty to the single count of Criminal Recklessness.

On October 21, 2010, the trial court entered judgment and sentenced Chilafoe to one year of imprisonment with ninety days executed and six days of credit time, suspending the remainder of the sentence to probation. At the conclusion of the sentencing hearing, the trial court indicated to Chilafoe that, if he wished to exercise his right to appeal, the trial court would appoint a public defender to help him conduct the appeal.

In its sentencing order, but not in its sentencing statement from the bench to Chilafoe, the trial court required Chilafoe to pay costs and fees totaling \$784.00, broken down as:

Clerk Administrative Fee	\$50.00
Probation User Fees	\$470.00
Noble County Public Defender’s Fee	\$100.00
Court fines and costs	\$164.00

(App. 46.) The trial court ordered the clerk of the court to withhold these costs and fees from the remission of the cash portion of Chilafoe’s bond, and ordered that the clerk remit the remaining bond money—\$4216—to Chilafoe.

On October 29, 2010, Chilafoe wrote a letter to the trial court requesting initiation of

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<sup>1</sup> A transaction receipt indicates a customer name of “Brandon Cretacci,” though the receipt appears to be signed by Chilafoe’s father, Sunny Chilafoe. (App. 12, 36.)

an appeal. The trial court appointed the Public Defender of Indiana as appellate counsel, and this appeal followed.

### **Discussion and Decision**

Chilafoe contends that the trial court abused its discretion when it failed to conduct a hearing on whether he was indigent and enter a finding to that effect before assessing the various fees and costs against him, which the trial court then deducted from his cash bond pursuant to the bond agreement. The State replies that the trial court did not abuse its discretion because the trial court had already determined Chilafoe to be indigent based upon its appointment of a public defender to represent him, and because Chilafoe agreed to the withdrawal of the fees and costs from the cash portion of his bond. Thus, the State argues, the trial court was not required to conduct an indigency hearing.

“[S]entencing decisions, including decisions to impose restitution, fines, costs, or fees, are generally left to the trial court’s discretion. If the trial court imposes fees within the statutory limits, there is no abuse of discretion.” Kimbrough v. State, 911 N.E.2d 621, 636 (Ind. Ct. App. 2009) (citing, inter alia, Banks v. State, 847 N.E.2d 1050, 1051 (Ind. Ct. App. 2006), trans. denied; Mathis v. State, 776 N.E.2d 1283, 1289 (Ind. Ct. App. 2002), trans. denied).

Because Chilafoe’s argument concerns the disposition of the 10% cash bond, we also consider our state’s provisions for bail and the remission of monies paid into court as bond. Indiana Code section 35-33-8-3.2(a)(2) allows a court to require the defendant to execute (1) a bail bond with a cash deposit equal to at least 10% of the total value of the bond to be paid

to the clerk of the court and (2) an agreement that the court may retain all or part of the cash deposit “to pay fines, costs, fees and restitution” if the defendant is convicted. From this deposit, “[t]he clerk shall retain ... fines, costs, fees, and restitution as ordered by the court” and “publicly paid costs of representation.” Id. This court has held that “public costs of representation may be deducted from the defendant’s cash bond prior to remittance,” Obregon v. State, 703 N.E.2d 695, 696 (Ind. Ct. App. 1998), and that, without a finding that a defendant is able to pay some of the publicly paid costs of his defense, it is an abuse of discretion to impose such costs where the defendant “posted no bond and was incarcerated following his arrest through ... trial.” Kimbrough, 911 N.E.2d at 637 (quoting Turner v. State, 755 N.E.2d 194, 200 (Ind. Ct. App. 2001), trans. denied).

Chilafoe contends that the trial court abused its discretion by failing to hold a hearing and enter a finding on whether he was indigent or able to pay, directing this challenge at all of the fees and costs the trial court assessed except for the probation user fees. Chilafoe bases his argument on Indiana Code section 33-37-2-3(a), which requires that trial courts conduct a hearing on whether a defendant is indigent before assessing fees and costs, and on Indiana Code section 35-33-7-6(c), which requires that a trial court find a defendant able to contribute some money for public defender representation before assessing a statutory fee to help defray the costs of publicly paid representation.

We think that this court’s recent decision in Wright v. State correctly addresses this matter where it held that “when a bail bond agreement is executed, such a hearing is not required.” Wright v. State, No. 57A03-1010-CR-570, \_\_\_ N.E.2d \_\_\_, slip op. at 7 (Ind. Ct.

App. May 27, 2011). We note also that prior cases decided by this court have held that assignment of a public defender is itself a determination that the defendant is indigent. Dunkley v. State, 787 N.E.2d 962, 965-66 (Ind. Ct. App. 2003) (citing Everroad v. State, 730 N.E.2d 222, 225, 227 (Ind. Ct. App. 2000) (holding that appointment of pauper counsel constitutes an indigency finding, and that in any event such a finding “is not conclusive in regard to a defendant’s ability to pay a fine”)) (superseded on unrelated grounds by Ind. Code § 9-30-5-2(b), Outlaw v. State, 918 N.E.2d 379 (Ind. Ct. App. 2009)). Here, the trial court found Chilafoe indigent three times—once when it appointed a public defender to represent Chilafoe at trial, once when it stated during Chilafoe’s sentencing hearing that an appellate public defender would represent him, and a final time when the trial court appointed a public defender to pursue this appeal. Thus, the trial court can hardly be claimed not to have found Chilafoe indigent, obviating the need for a hearing on the matter.

With or without finding indigency or ability to pay, the trial court was nevertheless within its discretion to assess and withhold fees and costs from Chilafoe’s cash bond. Chilafoe was required to post a \$50,000 bond, 10% of which—\$5000—was to be deposited with the clerk in cash under the trial court’s bond order. A \$5000 cash deposit on the bond was paid to the clerk on Chilafoe’s behalf. Chilafoe does not contest that he knowingly entered into the Bond Agreement, which provided that the court would regard the cash portion of the bond as his personal property and not the property of any individual who might pay the money into court on his behalf. Chilafoe does not argue that the Bond Agreement is in any way defective, or that he has any defense to enforcement of the Agreement.

Section 35-33-8-3.2(a)(2) allows the court to retain funds from the cash portion of the bail to cover costs and fees, including the costs of publicly paid legal representation. Merlington v. State, 839 N.E.2d 260, 265 (Ind. Ct. App. 2005); Turner, 755 N.E.2d at 200. Chilafoe agreed to this arrangement by entering into a Bond Agreement authorized under Indiana law. The amount of the cash bond was more than adequate to pay the fees and costs assessed; indeed, the trial court ordered the clerk to remit more than \$4200 to Chilafoe from the \$5000 deposit. Under these circumstances, the trial court committed no abuse of discretion in assessing fees and costs without first holding a hearing on Chilafoe's indigency or ability to pay and withholding those fees and costs from the cash portion of the bond.

Affirmed.

FRIEDLANDER, J., and BROWN, J., concur.