

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

State of Ohio
Appellee

Court of Appeals Nos. WD-14-029
WD-14-030

v.

Trial Court Nos. 13CR402
13CR452

Rodney Geren
Appellant

DECISION AND JUDGMENT

Decided: March 13, 2015

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney,
Gwen Howe-Gebers, Chief Assistant Prosecuting Attorney, and
David T. Harold, Assistant Prosecuting Attorney, for appellee.

Tim A. Dugan, for appellant.

* * * * *

YARBROUGH, P.J.

I. Introduction

{¶ 1} This is a consolidated appeal from the judgment of the Wood County Court of Common Pleas, convicting appellant, Rodney Geren, of one count of burglary in violation of R.C. 2911.12(A)(3), a felony of the third degree, and one count of breaking and entering in violation of R.C. 2911.13(A) and (C), a felony of the fifth degree.

Appellant contests the trial court's imposition of the costs of his prosecution as part of his sentence. We affirm.

A. Facts and Procedural Background

{¶ 2} On August 22, 2013, the Wood County Grand Jury entered two indictments charging appellant with one count of burglary and one count of breaking and entering, respectively. The indictments stemmed from appellant's actions on two separate occasions involving thefts from residences. On January 13, 2014, appellant entered pleas of guilty to both counts as indicted. In exchange for his pleas, the state agreed to recommend a one-year sentence on both counts, with those sentences to run consecutively for a total prison term of two years. No other promises by the state were entered into the record or contained in the plea agreement forms.

{¶ 3} On May 12, 2014, appellant appeared for sentencing. A discussion was held wherein it was revealed that the state was considering pursuing additional charges based on material found on appellant's computer. Thereafter, appellant made an oral motion to withdraw his guilty pleas. Appellant stated that it was his understanding that no other charges would be brought against him if he pleaded guilty to the burglary and breaking and entering counts. He concluded that if the state was going to bring other charges, then he would like to withdraw his guilty pleas. The state opposed appellant's motion, arguing that the plea agreements did not contain any terms regarding future charges. After hearing the parties' arguments, the trial court denied appellant's pre-sentence motion to withdraw his guilty pleas.

{¶ 4} The court proceeded to sentencing, and ordered appellant to serve 18 months in prison on the count of burglary, and 12 months in prison on the count of breaking and entering. The court further ordered those sentences to be served consecutively for a total prison term of 30 months. In addition, the court ordered appellant to pay the costs of prosecution. Appellant moved the court to waive those costs in light of the fact that he was 56 years old and disabled. The trial court denied appellant's request for a waiver.

B. Assignment of Error

{¶ 5} Appellant has timely appealed his conviction, asserting one assignment of error for our review:

1. The Trial Court abused its discretion in assessing court costs to Appellant.

II. Analysis

{¶ 6} R.C. 2947.23(A)(1) states, "In all criminal cases, including violations of ordinances, the judge or magistrate shall include in the sentence the costs of prosecution * * * and render a judgment against the defendant for such costs." The Ohio Supreme Court has held that costs of prosecution must be assessed against all criminal defendants, even indigent ones. *State v. White*, 103 Ohio St.3d 580, 2004-Ohio-5989, 817 N.E.2d 393, ¶ 8. Nevertheless, the trial court may waive those costs upon motion of the defendant. *Id.*; *State v. Threatt*, 108 Ohio St.3d 277, 2006-Ohio-905, 843 N.E.2d 164, ¶ 23. If such a motion is made, the trial court's decision is reviewed on appeal under an abuse of discretion standard. *Threatt* at ¶ 23.

{¶ 7} In support of his assignment of error, appellant argues that the trial court abused its discretion in imposing the costs where the record does not contain clear and convincing evidence of his ability to pay those costs. However, as noted above, the ability to pay is not a requirement to imposing the mandatory costs of prosecution under R.C. 2947.23. Furthermore, we find no abuse of discretion in the trial court's imposition of those mandatory costs in this case.

{¶ 8} Accordingly, appellant's assignment of error is not well-taken.

III. Conclusion

{¶ 9} For the foregoing reasons, the judgment of the Wood County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See also 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, P.J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
