

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA : No. CR-1263-2016

vs.

:

:

FREDDIE GRADY,

:

Defendant

: Motion to Reconsider Applying Costs & Fines

OPINION AND ORDER

On November 9, 2016, Defendant was sentenced to three (3) years' probation for one count of delivery of a controlled substance (marijuana), an ungraded felony. Although a fine was not imposed, Defendant was directed to pay specified costs and fees.

On November 10, 2016, Defendant filed a motion to return property. Defendant alleged that the Williamsport Bureau of Police seized approximately \$2,500.00 that belonged to him from cashing a lottery ticket and which constituted neither evidence nor contraband.

In an order dated December 6, 2016, following a preliminary conference with counsel, the Commonwealth was directed to return to Defendant a check made payable to him in the amount of \$650.00. As well, Defendant agreed that \$20.00 of the monies seized from him would remain in the Commonwealth's possession as "buy money."

The court proceeded to a hearing in connection with the remaining aspects of Defendant's motion to return property. Following the hearing, the Commonwealth was directed to return to Defendant within thirty (30) days of December 6, 2016 \$2,400.00 that was seized from him. The court found that the monies belonged to Defendant and were not contraband or derivative contraband. Specifically, the court concluded that the monies were won by Defendant through a lottery ticket.

All remaining monies that were confiscated from Defendant were forfeited to the Commonwealth. The court found that those monies were the source of illegal activity

and/or were commingled with the source of illegal activities and that there was insufficient evidence to support Defendant's motion in connection with such.

On December 7, 2016, the Commonwealth filed a motion to apply funds to costs and fines. The Commonwealth noted that \$2,776.00 was seized from Defendant, that the court ordered the return of \$2,400.00 and that \$2,161.50 of the money ordered to be returned to Defendant should be applied to Defendant's outstanding "costs and fines."

Without a hearing, the Court granted the Commonwealth's motion by Order dated December 12, 2016.

On January 4, 2017, Defendant filed a motion to reconsider. Defendant asserted that no hearing was held on the motion and that he should be given an opportunity to essentially explain his need for the monies and other circumstances regarding the Commonwealth's motion to apply all of the seized monies.

The court granted Defendant a hearing and it was scheduled for January 30, 2017.

At the hearing, both parties as well as the court agreed that the court erred in granting the Commonwealth's motion to apply the confiscated monies to Defendant's "costs and fines" without holding a hearing. Nonetheless, the Commonwealth argued that the court was without jurisdiction to hear and consider Defendant's motion to reconsider.

Specifically, the Commonwealth argued that the court's December 12, 2016 order was never appealed and pursuant to 42 Pa. C.S.A. § 5505, the court lacked the authority to modify the order in that thirty (30) days have passed "after its entry."

Despite the Commonwealth's argument, the court concludes that under the circumstances of this case, it retained jurisdiction to hear Defendant's motion to reconsider.

First, the motion was filed on January 4, 2017, within 30 days of the challenged order. Second, the court has inherent authority to correct patent and obvious errors. The December 12, 2016 order granted the Commonwealth's motion without stipulation of the parties and without a hearing. The mistake is obvious and the court has inherent authority to correct it more than thirty (30) days after its entry. *Commonwealth v. Holmes*, 933 A.2d 57 (Pa. 2007)(the limits of jurisdiction enshrined in 42 Pa. C. S. §5505 do not impinge on the time-honored inherent powers of the court to correct patent and obvious errors); see also *Commonwealth, Ex Rel. Powell v. Pennsylvania Department of Corrections*, 14 A.3d 912 (Pa. Commw. 2011).

Finally, and perhaps determinatively, the court concludes that there is extraordinary cause justifying the court's intervention. The court clearly erred in granting the motion without a hearing. As indicated above, the parties had not stipulated to the entry of the order and the face sheet of the motion did not indicate that it was uncontested. By signing the order without a hearing, the court denied Defendant due process of law. This was clearly an oversight by the court and a failure of the judicial process which operated to the detriment of Defendant. See, for example, *DeMarco v. Borough of East McKeesport*, 556 A.2d 977, 979 n.4 (Pa. Commw. 1989).

A court has authority to revise a defendant's installment payment schedule in connection with fines or costs. Pa. R. Cr. P. 706; see also 42 Pa.C.S. §9758 (b)("the court may permit installment payments as it considers appropriate to the circumstances of the defendant"); *Commonwealth v. Fish*, 13 Pa. D. & C. 3d 159 (1979)("Pa. R. Crim. P. 1407 [which was renumbered Rule 706 effective April 1, 2001] permit us, at any time, to alter petitioner's installment payment schedule....").

The court, in determining the amount of payment, in so far as is just and practicable, must consider the burden upon the defendant by reason of the defendant's financial means, including the defendant's ability to make restitution or reparations. Pa. R. Crim. P. 706(C).

During the hearing in this matter, Defendant testified that he is 75 years old and lives on social security in the amount of \$700.00 per month plus what his longtime girlfriend contributes and what he gets from "hustling." He noted that while he is not behind in rent or any other bills at this time, he has been behind in the past. He argued that the monies would make things a whole lot more "comfortable" for him and would give him a little bit of "freedom."

In considering what is fair and just under all of the circumstances, the court first considers that among the \$2,400.00, Defendant is to receive \$238.50. In its motion, the Commonwealth did not contest the return of this amount; it only requested that \$2,161.50 be applied to Defendant's fines and costs.¹

The remaining \$2,161.50 would represent a significant amount of money to Defendant given his limited monthly income. However, Defendant has made due for a

¹ \$2,400 – \$2,161.50 = \$238.50.

substantial period of time. His payment schedule is only \$40.00 per month. Obviously, he has the ability to pay much more than that at this time.

Considering all of the circumstances, the court will grant Defendant's motion in part. Of the remaining \$2,161.50, fifty percent (50%) shall be applied to costs and fines and the remaining amount will be returned to Defendant. Defendant's monthly payment of \$40.00 shall resume on the first day of March 2017 with each subsequent payment being due and owing no later than the first day of each subsequent month until the balance is paid in full.

ORDER

AND NOW, this 13th day of February 2017, following a hearing and argument, the court grants in part Defendant's motion to reconsider. Within fourteen (14) days of the date of this order, the Williamsport Bureau of Police shall forward the sum of \$1,080.75 to the Lycoming County Costs and Fines Office to be applied toward Defendant's costs and fines, and return the sum of \$1,319.25 to Defendant.²

BY THE COURT,

Marc F. Lovecchio, Judge

cc: Anthony Ciuca, Esquire (ADA)
Matthew Welickovitch, Esquire (APD)
Cost Clerk
WBP
Gary Weber, Esquire (Lycoming Reporter)
Work File

² According to the Commonwealth's motion to apply funds to costs and fines, the police seized \$2,776 in cash from Defendant. The court originally directed that \$2,400 of the cash be returned to Defendant, which resulted in the Commonwealth retaining a total of \$376, consisting of the "buy money" and the forfeited funds.