

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Janell M. Lee,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

September 21, 2022

Court of Appeals Case No.  
22A-CR-503

Appeal from the Miami Superior  
Court

The Honorable Daniel C.  
Banina, Judge

Trial Court Cause No.  
52D02-2007-F5-202

**Robb, Judge.**

## Case Summary and Issue

- [1] Janell Lee pleaded guilty to theft, a Level 5 felony. The trial court sentenced her to three years with nine months to be executed in the Indiana Department of Correction (“DOC”). The trial court also imposed a public defender fee and court costs. Lee now appeals, raising one issue for our review which we restate as whether the trial court abused its discretion by ordering Lee to pay a public defender fee and court costs. Concluding the trial court did not abuse its discretion, we affirm.

## Facts and Procedural History

- [2] Lee was employed as a bookkeeper for Broadway Home Improvements. During her employment, Lee deposited \$65,822.99 of the company’s money into her and her husband’s personal bank accounts without authorization. Lee’s conduct was discovered during an audit in March 2020. On July 7, 2020, the State charged Lee with one count of theft as a Level 5 felony and two counts of theft as Level 6 felonies.
- [3] Lee was arrested and posted a \$2,500 cash bond. Lee’s bond agreement stipulated:

The Defendant may pledge, or the Court may order, the Bond money used for the payment of attorney fees, fines, court costs, restitution, probation service fees or other user’s fees.

Appellant’s Appendix, Volume II at 28.

- [4] On February 18, 2021, a pretrial conference was held. The trial court questioned Lee about her employment status, current hourly rate of pay, and whether she had hired an attorney. Lee stated that she had hired an attorney but that her attorney “just needs more money.” Transcript of Evidence, Volume II at 24-25. However, the trial court noted that no attorney had entered an appearance on Lee’s behalf and appointed a public defender to represent Lee.
- [5] On October 28, 2021, Lee entered into a plea agreement wherein she agreed to plead guilty to theft as a Level 5 felony, and in exchange her other charges would be dismissed. The plea agreement provided, in relevant part, that Lee “shall pay all applicable costs.” Appellant’s App., Vol. II at 75. On January 6, 2022, a change of plea hearing was held. The trial court reiterated that pursuant to the agreement, Lee would pay the “applicable court costs, fees, or probation fees, whatever the Court decides as far as sentencing.” Tr., Vol. II at 56.
- [6] Subsequently, Lee was sentenced to three years with nine months to be executed in the DOC. The trial court also imposed a public defender fee of \$300, court costs of \$185, a \$100 administrative fee, and a \$100 initial probation service fee and \$30 each month thereafter while on probation. The trial court ordered Lee’s bond to be applied to these charges. *See* Appealed Order at 1. Lee now appeals.

## Discussion and Decision

- [7] “[S]entencing decisions, including decisions to impose restitution, fines, costs, or fees, are generally left to the trial court’s discretion.” *Kimbrough v. State*, 911 N.E.2d 621, 636 (Ind. Ct. App. 2009). If the fees imposed by the trial court fall within the parameters provided by statute, we will not find an abuse of discretion. *Id.* “A defendant’s indigency does not shield him from all costs or fees related to his conviction.” *Banks v. State*, 847 N.E.2d 1050, 1051 (Ind. Ct. App. 2006), *trans. denied*.
- [8] Lee argues that “[t]he trial court improperly imposed a public defender fee and court costs on [her].”<sup>1</sup> Brief of the Appellant at 7. Specifically, Lee argues that the trial court erred when it failed to hold an indigency hearing. However, in *Wright v. State*, 949 N.E.2d 411, 416 (Ind. Ct. App. 2011), this court held that an indigency hearing is not required when a bail bond agreement is executed.<sup>2</sup> Pursuant to Indiana Code section 35-33-8-3.2(a)(2), the trial court may require the defendant to execute:

(A) a bail bond by depositing cash or securities with the clerk of the court in an amount not less than ten percent (10%) of the bail;  
and

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<sup>1</sup> Lee does not challenge the other fees the trial court imposed.

<sup>2</sup> Lee also argues that the trial court could not have relied upon Indiana Code section 33-37-2-3(a) when imposing court costs because there was no finding that she was indigent. We disagree. In *Wright*, we held “the indigency hearing requirement of Indiana Code Section 33-37-2-3(a) does not apply when a defendant has entered into a cash bail bond agreement pursuant to Section 35-33-8-3.2(a)(2).” 949 N.E.2d at 416. The statute remains valid authority for the imposition of court costs.

(B) an agreement that allows the court to retain all or a part of the cash or securities to pay fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted.

Further, this court has also recognized that when a defendant posts a cash bail bond, pursuant to Indiana Code section 35-33-8-3.2, the trial court has authority to impose public defender costs. *See Turner v. State*, 755 N.E.2d 194, 200 (Ind. Ct. App. 2001) (“Trial courts may deduct additional money to cover public defender costs from a defendant’s posted cash bond pursuant to Indiana Code Section 35-33-8-3.2.”), *trans. denied*.

[9] Here, Lee executed a cash bond agreement wherein she agreed her cash bond could be “used for the payment of attorney fees, fines, court costs, restitution, probation service fees or other user’s fees.” Appellant’s App., Vol. II at 28. Lee pleaded guilty to theft and was convicted. Therefore, the trial court had the authority to use the bond money held in escrow to pay court costs and the public defender fee and did not abuse its discretion.

## Conclusion

[10] We conclude the trial court did not abuse its discretion by ordering Lee to pay court costs and a public defender fee. Accordingly, we affirm.

[11] Affirmed.

Pyle, J., and Weissmann, J., concur.