

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Justin Allen Handshoe,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

June 27, 2023

Court of Appeals Case No.
23A-CR-38

Appeal from the Noble Superior
Court

The Honorable Steven C. Hagen,
Judge

Trial Court Cause No.
57D02-2108-F6-251

Memorandum Decision by Judge Crone
Judge Brown and Senior Judge Robb concur.

Crone, Judge.

Case Summary

- [1] Justin Allen Handshoe pled guilty to and was convicted of class B misdemeanor possession of marijuana. Thereafter, Handshoe failed to appear for sentencing, and a warrant was issued for his arrest. The sheriff later served the warrant, and Handshoe was arrested and brought to sentencing. During sentencing, the trial court imposed certain fines and costs, including a \$28 sheriff's service fee. The written sentencing order also indicated that a \$25 late fee would be imposed if Handshoe failed to pay his fines and costs by their due date. Handshoe now appeals, claiming that the trial court abused its discretion in imposing those two fees. We affirm in part, reverse in part, and remand.

Facts and Procedural History

- [2] In August 2021, Handshoe was arrested after being stopped on a moped without a license. He was found in possession of marijuana and a syringe. The State charged Handshoe with level 6 felony possession of a syringe, class B misdemeanor possession of marijuana, and class C misdemeanor operating a vehicle without ever having received a valid license. The State also alleged that Handshoe was a habitual offender.
- [3] Handshoe subsequently pled guilty, pursuant to a plea agreement, to class B misdemeanor possession of marijuana. Sentencing was left to the trial court's discretion. The trial court accepted Handshoe's guilty plea, entered judgment of conviction, and set the matter for a sentencing hearing.

[4] Handshoe failed to appear for the sentencing hearing, and the trial court issued a warrant for his arrest. The sheriff arrested Handshoe the following day. A sentencing hearing was held on December 12, 2022. The trial court sentenced Handshoe to 180 days in the Noble County Jail, with three days credit for time served. The court further imposed a \$10 fine, \$185 in court costs, a \$200 drug and alcohol interdiction fee, and a \$28 sheriff's service fee. The court further found Handshoe indigent as to fines and costs. In its oral sentencing statement, the court indicated that, due to such indigency, Handshoe had one year to pay the fees and costs. However, per the written sentencing order, the costs and fees were due by March 21, 2023, and a \$25 late fee would be imposed if Handshoe failed to pay by this date. This appeal ensued.

Discussion and Decision

[5] Handshoe appeals the trial court's imposition of two fees during sentencing. We review sentencing decisions, including the imposition of fines, costs, and fees, for an abuse of discretion. *Meunier-Short v. State*, 52 N.E.3d 927, 930 (Ind. Ct. App. 2016). An abuse of discretion occurs when the decision is clearly against the logic and effect of the evidence before the court or the reasonable inferences to be drawn therefrom. *Clemons v. State*, 105 N.E.3d 1139, 1141 (Ind. Ct. App. 2018). "If the fees imposed by the trial court fall within the parameters provided by statute, we will not find an abuse of discretion." *Berry v. State*, 950 N.E.2d 798, 799 (Ind. Ct. App. 2011).

[6] We first address the trial court's imposition of the \$28 sheriff's service fee. At the time of Handshoe's offense, Indiana Code Section 33-37-5-15(a) provided:

The clerk of the county that maintains jurisdiction over the case shall collect a service of process fee of twenty-eight dollars (\$28) from a party requesting service of a writ, an order, a process, a notice, a tax warrant, or any other paper completed by the sheriff. A service of process fee collected under this subsection may be collected only one (1) time per case for the duration of the case. However, a clerk of the county that maintains jurisdiction over the case shall collect an additional service of process fee of twenty-eight dollars (\$28) per case for any postjudgment service.

Handshoe argues that imposition of the fee here was improper because the statute says that the fee shall be collected from a party requesting service, and he did not request that he be served by the sheriff with an arrest warrant. However, Handshoe ignores the latter part of the subsection, which provides that the county clerk shall collect a fee for any postjudgment service. Here, the sheriff served an arrest warrant on Handshoe after judgment of conviction was entered. Accordingly, the statute authorized imposition of a \$28 service of process fee for that service. The trial court did not abuse its discretion in imposing that fee.

[7] The same cannot be said for the \$25 late payment fee. Indiana Code Section 33-37-5-22 provides in relevant part that a county clerk may collect a \$25 late payment fee from a defendant for failure to pay court imposed costs or fines when due if he was found to have committed a crime by a court that has a local court rule imposing a late payment fee under this section, and he is not determined to be indigent by the court imposing the costs or fines. Ind. Code § 33-37-5-22(a)(1), -(a)(3). The State concedes that Noble County does not have a

local rule imposing a late payment fee under this section. Moreover, the trial court found Handshoe indigent at the time of sentencing. Accordingly, the trial court abused its discretion in imposing such fee.

[8] In sum, we affirm the trial court’s imposition of the \$28 sheriff’s service fee. We reverse the imposition of the \$25 late payment fee and remand for correction of the trial court’s written sentencing order accordingly. We further note that the trial court’s oral sentencing statement and its written sentencing order are in conflict regarding the due date for the remainder of the properly imposed fees and costs.¹ In light of the unambiguous nature of the trial court’s oral sentencing pronouncement regarding the one-year window for payment, we sua sponte instruct the trial court to correct that apparent error in its written sentencing order. *See Willey v. State*, 712 N.E.2d 434, 445 n.8 (Ind. 1999) (“Based on the unambiguous nature of the trial court’s oral sentencing pronouncement, we conclude that [the sentencing order] contain[s] clerical errors and remand this case for correction of those errors.”).

[9] Affirmed in part, reversed in part, and remanded.

Brown, J., and Robb, Sr.J., concur.

¹ As we noted earlier, during the December 12, 2022 sentencing hearing, the trial court stated that Handshoe would have one-year to pay the fines and costs, resulting in a due date of December 12, 2023. However, the written sentencing order indicates a due date of March 21, 2023.