



ATTORNEY FOR APPELLANT

Victoria Bailey Casanova
Casanova Legal Services, LLC
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana
Indianapolis, Indiana

Catherine E. Brizzi
Deputy Attorney General
Indianapolis, Indiana

Alexa Rojas
Certified Legal Intern

IN THE
COURT OF APPEALS OF INDIANA

Brian L. Sears,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

August 26, 2022

Court of Appeals Case No.
22A-CR-555

Appeal from the Clay Circuit
Court

The Honorable Joseph D. Trout,
Judge

Trial Court Cause No.
11C01-2106-CM-393

May, Judge.

[1] Brain L. Sears appeals his sentence following his conviction of Class A misdemeanor theft.¹ He raises one issue on appeal, which is whether the trial court erred as a matter of law when it ordered Sears to pay a \$200 drug interdiction fee and a \$200 countermeasure fee. Concluding the trial court erred in imposing both fees, we reverse and remand.

Facts and Procedural History

[2] On May 10, 2021, Sears detached the price tag from a backpack on sale for \$119.99 at the Ace Hardware store in Brazil, Indiana. He also detached the price tag from a tool belt that was on sale for \$54.99. When Sears went to the cash register, he presented the backpack for purchase and represented the detached price tag for the tool belt was the price tag associated with the backpack. Consequently, he paid \$54.99 for a backpack that cost \$119.99. Surveillance footage captured Sears removing the price tags, and the owner of the hardware store reported Sears's activity to law enforcement.

[3] On June 3, 2021, the State charged Sears with Class A misdemeanor theft. The trial court held a bench trial on February 16, 2022, and found Sears guilty. The trial court then imposed a sentence of 365 days in the Clay County jail with all but 90 days suspended to probation. As two conditions of Sears's probation,

¹ Ind. Code § 35-43-4-2 (2019).

the trial court ordered that he pay a \$200 drug interdiction fee and a \$200 countermeasures fee.

Discussion and Decision

[4] Sentencing decisions, including the imposition of restitution, fines, costs, or fees, are generally left to the sound discretion of the trial court. *Berry v. State*, 950 N.E.2d 798, 799 (Ind. Ct. App. 2011). We therefore review such decisions for an abuse of discretion, which occurs if the trial court’s “decision is clearly against the logic and effects of the facts and circumstances before it or if it misinterprets or misapplies the law.” *Gil v. State*, 988 N.E.2d 1231, 1234 (Ind. Ct. App. 2013) (internal quotation marks omitted). “If the fees imposed by the trial court fall within the parameters provided by statute, we will not find an abuse of discretion.” *Berry*, 950 N.E.2d at 799.

[5] Sears argues the trial court erred as a matter of law in imposing the drug interdiction fee and the countermeasures fee, and the State concedes the fees were erroneously imposed. Indiana Code section 33-37-4-1(a) directs the clerk to collect court costs from each convicted defendant in a criminal case. In addition to costs, Indiana Code section 33-37-4-1(b) directs the clerk to collect additional fees if they are required under Indiana Code chapter 33-37-5, including a drug abuse, prosecution, interdiction, and correction fee pursuant to Indiana Code section 33-37-5-9 and an alcohol and drug countermeasures fee pursuant to Indiana Code section 33-37-5-10.

- [6] Indiana Code section 33-37-5-9 states: “The court shall assess a drug abuse, prosecution, interdiction, and correction fee of at least two hundred dollars (\$200) and not more than one thousand dollars (\$1,000) against a person convicted of an offense under IC 35-48-4.” Indiana Code chapter 35-48-4 lists offenses related to controlled substances. It does not include offenses against property. As Sears was not convicted of an offense listed in this chapter, the trial court erred in imposing a drug interdiction fee, and we remand so that the trial court may vacate imposition of the fee. *See Meunier-Short v. State*, 52 N.E.3d 927, 933 (Ind. Ct. App. 2016) (holding trial court lacked statutory authority to impose \$200 substance abuse fee).
- [7] Indiana Code section 33-37-5-10 authorizes a \$200 countermeasures fee in each action in which a person is found to have committed an offense or infraction under Indiana Code chapter 9-30-5 and the person’s driving privileges are suspended as a result of the finding. The statute also authorizes imposition of the countermeasures fee if a person is charged with an offense under Indiana Code chapter 9-30-5, agrees to plead guilty to an offense not listed in that chapter of the Indiana Code, and agrees to pay the countermeasures fee as part of the plea agreement. Indiana Code chapter 9-30-5 concerns offenses involving operating a vehicle while intoxicated. As Sears was not charged with or convicted of an offense listed in this chapter, the trial court erred in imposing a countermeasures fee, and we remand so that the trial court may vacate imposition of the fee. *See Meunier-Short*, 52 N.E.3d at 934 (holding trial court lacked statutory authority to impose \$200 countermeasures fee).

Conclusion

[8] The trial court erred by imposing the drug interdiction fee and the countermeasures fee because neither fee was authorized by statute. We reverse and remand.

[9] Reversed and remanded.

Riley, J., and Tavitas, J., concur.