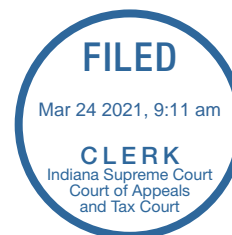


MEMORANDUM DECISION

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

Alen Middleton,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 24, 2021

Court of Appeals Case No.
20A-CR-1876

Appeal from the Vanderburgh
Superior Court

The Honorable Leslie C. Shively,
Judge

The Honorable Molly E. Briles,
Magistrate

Trial Court Cause No.
82D01-1907-CM-5173

Riley, Judge.

STATEMENT OF THE CASE

- [1] Appellant-Defendant, Alen Middleton (Middleton), appeals his sentence for domestic battery, as a Class A misdemeanor, Ind. Code § 35-42-2-1.3(a)(1).
- [2] We affirm and remand with instruction.

ISSUE

- [3] Middleton presents this court with one issue on appeal, which we restate as: Whether the trial court abused its discretion by ordering Middleton to pay the costs of a batterer's intervention program as a condition of his probation without first conducting an indigency hearing.

FACTS AND PROCEDURAL HISTORY

- [4] Middleton had been married to R.M. for six years before their divorce in January 2020. They have one child together. On July 26, 2019, prior to finalizing the divorce, Middleton, R.M., and the child were in the car together when Middleton demanded that R.M. give him her cell phone. R.M. refused and an argument ensued. Middleton attempted to grab the cell phone but R.M. pulled away from him, and Middleton punched her in the face. Middleton drove to a parking lot, where he exited the car with the child. R.M. called 911, and officers subsequently located and arrested Middleton, and returned the child to R.M.
- [5] On July 26, 2019, the State filed an Information, charging Middleton with domestic battery, as a Class A misdemeanor. On September 10, 2020, the trial

court conducted a bench trial and found Middleton guilty as charged. After pronouncing Middleton guilty, the trial court proceeded to the sentencing phase and imposed 180 days, with 176 days suspended to probation and four days to be served in jail. When discussing the conditions of probation, the State noted, “I don’t know if the batterer’s intervention program would be the best thing or some kind of anger management, but I think, [] the victim said that’d be appropriate.” (Transcript Vol. II, p. 30). In response, Middleton’s counsel advised that

they try to do the best they can with limited funds. Very limited funds. And clearly a batterer’s intervention program, although I understand it is a very good program, is not needed in this case. They don’t really have that interaction between the two of them anymore, at least on a daily basis, so to speak. The time commitment of that would certainly interfere with the raising of their [child] and it’s taking food out of his mouth essentially. But if the court has to assess fines and costs here I think that’s probably the most appropriate.

(Tr. Vol. II, pp. 30-31). The State agreed that the batterer’s intervention program was a “long intensive program with a lot of time and expense” and suggested that the probation department be tasked with finding a shorter and less expensive anger management program that would assist Middleton with his anger issue. (Tr. Vol. II, p. 31). Believing that completing a batterer’s intervention program would be most helpful, the trial court ordered 176 days of Middleton’s sentence suspended “on the condition that [he] enroll in and complete the batterer’s intervention program.” (Tr. Vol. II, p. 32). The trial

court found Middleton to be indigent for purposes of appointing appellate counsel.

[6] Middleton now appeals. Additional facts will be provided if necessary.

DISCUSSION AND DECISION

[7] Sentencing decisions include decisions to impose fees and costs. *Berry v. State*, 950 N.E.2d 798, 799 (Ind. Ct. App. 2011). A trial court's sentencing decisions are reviewed under an abuse of discretion standard. *McElroy v. State*, 865 N.E.2d 584, 588 (Ind. 2007). An abuse of discretion occurs when the sentencing decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. *Id.* at 588. 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.

[8] Middleton contends that the trial court abused its discretion by not conducting an indigency hearing after ordering Middleton to complete a batterer's intervention program as a condition of his probation. Although the State suggests that the trial court merely ordered Middleton to complete the program as a condition of his probation without allocating costs, we find that it was the trial court's intention to impose the costs of that program on Middleton as the trial court clearly noted Middleton's "concerns about the cost," but nevertheless concluded that the program would be most helpful to him. (Tr. Vol. II, p. 32).

[9] At the time of sentencing for an individual convicted of domestic battery, the trial court may require the accused to complete a batterer's intervention program approved by the trial court with the accused to pay the costs of the program. See I.C. § 35-50-9-1. Pursuant to I.C. § 33-27-2-3, when a program's costs are imposed as a condition of probation, a trial court is required to conduct an indigency hearing. However, "the statute does not otherwise dictate when the hearing is to be held." *Johnson v. State*, 27 N.E.3d 793, 794-95 (Ind. Ct. App. 2015). A trial court acts within its authority when it chooses to wait and see if a defendant can pay probation fees before it finds the defendant indigent. See I.C. Ch. 35-38-2 (no language in this chapter requires the trial court to conduct an indigency hearing before or directly after ordering probation fees); see also *id.* That being said, a trial court has a duty to conduct an indigency hearing at some point in time. In *Johnson*, we clarified that "[a]t the latest, an indigency hearing for probation fees should be held at the time a defendant completes his sentence." *Id.* Consequently, in this case, and in light of both parties' concerns about Middleton's ability to pay the program's fees, the trial court should conduct an indigency hearing at the latest upon the completion of Middleton's sentence. Therefore, the judgment of the trial court is remanded to conduct an indigency hearing on the completion of sentence,

whereupon the trial court may also recalculate the amount of probation fees owed, if appropriate.¹

CONCLUSION

[10] Based on the foregoing, we hold that the trial court did not abuse its discretion by ordering Middleton to pay for a batterer's intervention program as a condition of his probation but remand with instruction to conduct an indigency hearing upon completion of his sentence.

[11] Affirmed and remanded with instruction.

[12] Mathias, J. and Crone, J. concur

¹ Even though the trial court found Middleton indigent for purposes of appointing appellate counsel, we note that "a finding of indigency for appointing appellate counsel is not conclusive as to a defendant's ability to pay costs." *Vestal v. State*, 745 N.E.2d 249, 258 (Ind. Ct. App. 2001), *summarily aff'd*, 773 N.E.2d 805, 805 (Ind. 2002).