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IN THE
COURT OF APPEALS OF INDIANA

Diana Neeley,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 26, 2022

Court of Appeals Case No.
21A-CR-1327

Appeal from the Greene Superior
Court

The Honorable Dena Martin,
Judge

Trial Court Cause No.
28D01-2009-F6-198

Bailey, Judge.

Case Summary

- [1] Diana Neeley (“Neeley”) appeals the assessment of court fees and costs imposed upon her following her conviction, per a plea agreement, of failure to comply with compulsory school attendance law, a Class B misdemeanor.¹
- [2] We affirm in part, reverse in part, and remand with instructions.

Issues

- [3] Neeley raises two issues on appeal which we restate as:
- I. Whether the trial court abused its discretion when it imposed upon her a \$100 child abuse prevention fee; and
 - II. Whether the trial court abused its discretion when it failed to remit to Neeley the portion of her bail bond deposit that remained following payment of authorized court fees and costs.

Facts and Procedural History

- [4] On September 2, 2020, the State charged Neeley with Count I, neglect of a dependent, as a Level 6 felony.² The trial court set a bond at \$4,000, and Neeley posted a ten percent cash deposit of \$400. Neeley signed a bond agreement form in which she agreed that she would receive back from the court

¹ Ind. Code §§ 20-33-2-27 and 20-33-2-44.

² I.C. § 35-46-1-4(a)(4).

clerk only that portion of her deposit that remained after the payment of authorized fines, costs, and fees.

- [5] Neeley failed to appear for a hearing on March 11, 2021. The court issued a warrant for her arrest and set a bond at \$5,000, with a ten percent cash deposit. Neeley posted a \$500 cash bond on April 11, 2021 and signed a second bond agreement form containing the same language as that in the first such agreement form.
- [6] On June 1, 2021, the State charged Neeley with Count II, failure to comply with compulsory school attendance law, a Class B misdemeanor. On that same date, the State moved to dismiss Count I and Neeley entered a plea of guilty to Count II. On June 1, the trial court entered a judgment of conviction against Neeley for Count II, dismissed Count I, and held a sentencing hearing. The court sentenced Neeley to serve a sixty-day term in jail and pay a \$35 fine, “plus court costs.” Tr. at 36. The court ordered that the two bond deposits Neeley had posted would be “released to pay all [her] fines, fees[,] and costs related to” the case. *Id.* In addition, the court ordered Neeley to pay a \$100 “child abuse prevention fee.” App. at 41. That same date, the trial court issued an “Order Assigning Priorities for the Payment of Fines, Costs, and Fees,” in which it ordered that Neeley’s “bond be released after the deduction of the bond administration fee and the special death benefit fee, and upon payment of the following, in the order and priority designated.” *Id.* at 44. The order then listed as first priority the payment of \$240 for the costs of representation incurred by the county in paying the court-appointed lawyer; second priority as “costs;”

third priority as “fine;” and fourth priority as “[a]ny outstanding criminal fees in Greene County.” *Id.*

- [7] The Chronological Case Summary (“CCS”) in this case contains, at its end, a “Financial Information” section under which the court notes that Neeley’s “Total Charges” are “\$660.00;” her “Total Payments and Credits” are “\$660.00;” and her “Balance Due as of 6/30/2021” is “\$0.00.” *Id.* at 8. The Financial Information section further notes that Neeley’s “Cash Bond Account Balance as of 6/30/2021” is “\$0.00.” *Id.* This appeal ensued.

Discussion and Decision

- [8] Neeley challenges the trial court’s order imposing fees and costs as part of her sentence. We review such a decision for an abuse of discretion. *Holder v. State*, 119 N.E.3d 621, 624 (Ind. Ct. App. 2019). An abuse of discretion occurs when the 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. *Coleman v. State*, 61 N.E.3d 390, 392 (Ind. Ct. App. 2016). If the fees fall within the parameters of the statute authorizing such fees, we will not find an abuse of discretion. *Holder*, 119 N.E.3d at 624.
- [9] Indiana Code Section 35-33-8-3.2 governs bail and bail forfeiture. Under that statute, a criminal defendant may post ten percent of the bail (rather than the entire amount), but that ten percent deposit will be subject to retention by the clerk of the court for the reimbursement of publicly paid costs of

representation.³ I.C. § 35-33-8-3.2(a)(2). Within thirty days after the disposition of the charges against the defendant, the court must “order the clerk to remit the amount of the deposit remaining under subsection (a)(2) to the defendant.” I.C. § 35-33-8-3.2(b). “Disposition” occurs when charges are dismissed or the defendant is acquitted or convicted of the charges. I.C. § 35-33-8-3.2(c). Thus, our Supreme Court has noted that a bail bond “is an asset of the defendant[,]” and, “all other things being equal, the defendant is entitled to have this asset, less any authorized deductions, returned to him when the bond is released because it is no longer needed to secure his appearance at trial.” *Garner v. Kempf*, 93 N.E.3d 1091, 1098 (Ind. 2018).

[10] Here, Neeley deposited with the court a total of \$900, which was ten percent of her two bail bonds, and she agreed to pay authorized court costs, fines, and fees with that ten percent deposit. As part of its sentence, the trial court ordered Neeley to pay court fees and costs totaling \$660, as stated in the CCS.⁴ The parties agree that \$100 of that total was a charge for a child abuse prevention fee, and that charge was not authorized by statute. *See* I.C. § 33-37-5-12(1)(P)

³ Indiana Code Section 33-37-4-1 lists the various fees that may be collected from a defendant in a criminal action that results in a felony or misdemeanor conviction, including additional fees required under Indiana Code Section 33-37-5.

⁴ The CCS is the only document in the record that reflects the total amount of the costs and fees the trial court imposed upon Neeley. We note that the “CCS” in the Public Defender Information System, to which Neeley points, is not an official part of the record. *See* App. at 55 (“This is not the official court record. Official records of court proceedings may only be obtained directly from the court maintaining a particular record.”). *See also, e.g., City of Indianapolis v. Hicks*, 932 N.E.2d 227, 233 (Ind. Ct. App. 2010) (“[I]t is well settled that the trial court speaks through its CCS or docket, and this court is limited in its authority to look behind the CCS to examine whether an event recorded therein actually occurred.” (citations omitted)), *trans. denied*.

(authorizing child abuse prevention fee if the defendant is found to have committed neglect of a dependent under I.C. § 35-46-1-4). Since the charge against Neeley for neglect of a dependent was dismissed, the court abused its discretion when it imposed upon Neeley the \$100 child abuse prevention fee.

[11] The remaining \$560 retained by the court for Neeley’s fees and costs was authorized by statute, and Neeley does not contend otherwise. However, there remains a \$340 discrepancy between Neeley’s total bond deposit of \$900 and the charges the court was authorized to impose (i.e., \$560). The CCS discloses that, by June 30, 2021, the trial court had failed to remit to Neeley the \$340 of her deposit that remained following the court’s authorized retention of \$560 in costs and fees.⁵ Neeley is clearly entitled to the remaining \$340 of her bond deposit, pursuant to Indiana Code Section 35-33-8-3.2(b).

[12] We affirm the trial court order that Neeley pay \$560 in authorized costs and fees, reverse the order that Neeley pay \$100 for a child abuse prevention fee, and remand this matter with instructions for the trial court to remit to Neeley the \$340 remaining from her bail deposit after payment of the \$560 in authorized fees and costs.

⁵ The State erroneously contends that Neeley’s only claim for relief is that the trial court “might have used a portion of her bond to cover costs from other criminal cases without statutory authority to do so,” and that claim is not supported by the record. Appellee’s Br. at 9. However, while Neeley does note that there is “no suggestion in the record that the escrow money went to pay other ‘outstanding criminal fees in Greene County,’” that is not her only claim. Appellant’s Br. at 11. Rather, Neeley properly maintains on appeal that the trial court abused its discretion when it failed to remit to her the remainder of her bond deposit after payment of authorized fees and costs.

[13] Affirmed in part, reversed in part, and remanded with instructions.

Mathias, J., and Altice, J., concur.