

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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Joseph A. Loy,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

July 17, 2023

Court of Appeals Case No.  
23A-CR-237

Appeal from the Noble Circuit  
Court

The Honorable Michael J. Kramer,  
Judge

Trial Court Cause No.  
57C01-2203-F3-3

**Memorandum Decision by Judge Mathias**  
Judges Vaidik and Pyle concur.

**Mathias, Judge.**

[1] Joseph A. Loy appeals the Noble Circuit Court’s order that he pay a \$100 public-defender fee. Loy raises a single issue for our review, namely, whether the trial court abused its discretion when it ordered him to pay the fee. We reverse.

## **Facts and Procedural History**

[2] On March 10, 2022, the State charged Loy with two felonies and one misdemeanor, to which he later pleaded guilty. Appellant’s App. Vol. 2, pp.17-18, 34. On January 9, 2023, the trial court entered its judgment and sentenced him to an aggregated term of eleven years with nine years executed in the Indiana Department of Correction. *Id.* at 61.

[3] At the initial hearing, Loy requested the appointment of a public defender. Tr. Vol. 2, p. 5. He stated that he had only recently started a job, that he did not yet know what his income would be, and that his checking account had a balance of “[n]egative \$60.00[.]” *Id.* at 5-6. The trial court found that he was “indigent at this time” and appointed a public defender to represent him. Appellant’s App. Vol. 2, p. 23.

[4] However, at the conclusion of the sentencing hearing, the trial court ordered Loy to reimburse his public defender \$100. Tr. Vol. 2, p. 54. In its written sentencing order, the trial court stated: “The Defendant shall reimburse to the Noble County Supplemental Public Defender Services Fund, established pursuant to I.C. [§] 33-9-11.5, for public defender services rendered herein in the sum of \$100.00: upon completion of probation.” Appellant’s App. Vol. 2, p.

62. The order also stated that “[t]he Court finds the Defendant indigent at this time and shall not be imprisoned for failure to pay fines and costs.” *Id.* at 61. The court appointed a public defender to represent Loy on appeal, and this appeal ensued.

## Discussion and Decision

[5] Loy asserts that the trial court abused its discretion when it ordered him to pay the \$100 public defender fee even though the court found him to be indigent. We review the trial court’s imposition of fees for an abuse of discretion. *Jackson v. State*, 968 N.E.2d 328, 333 (Ind. Ct. App. 2012). If the trial court imposes fees within statutory limits, there is no abuse of discretion. *Id.*

[6] In its written order, the trial court did not specify the statute upon which it relied in imposing the \$100 public defender fee. *See* Appellant’s App. Vol. 2, p. 62. However, the applicable statute is [Indiana Code section 35-33-7-6](#) (2022), which states in relevant part:

(a) Prior to the completion of the initial hearing, the judicial officer shall determine whether a person who requests assigned counsel is indigent under section 6.5 of this chapter. If the person is found to be indigent, the judicial officer shall assign counsel to the person.

\* \* \*

(c) If the court finds that the person is able to pay part of the cost of representation by the assigned counsel, the court shall order the person to pay the following:

(1) For a felony action, a fee of one hundred dollars (\$100).

(2) For a misdemeanor action, a fee of fifty dollars (\$50).

If the court orders the person to pay an amount described in subdivision (1) or (2), the court shall inquire at sentencing whether the person has paid the required amount. . . .

(d) The court may review the finding of indigency at any time during the proceedings . . . .

[7] Loy asserts that, because the trial court found him to be indigent, the trial court was required by [Indiana Code section 35-33-7-6](#) to assess his ability to pay any portion of the public defender fee before imposing the \$100 fee. The State responds that Loy’s ability to pay the \$100 fee is implied by Loy’s financial situation, namely, his employment status and purported assets. Appellant’s App. Vol. 2, p. 44.

[8] We agree with Loy. As this Court has held, under [Indiana Code section 35-33-7-6](#) “a court must explicitly find a defendant can pay the fees imposed.” *Banks v. State*, 847 N.E.2d 1050, 1052 (Ind. Ct. App. 2006), *trans. denied*. Here, the trial court did not explicitly find that Loy can pay the \$100 fee. Indeed, in its written order, the court explicitly found that Loy was “indigent at this time” and could not be imprisoned for his failure to pay the ordered fees. Appellant’s App. Vol. 2, p. 61. Accordingly, we reverse the trial court’s order for Loy to pay the \$100 public-defender fee.

[9] Reversed.

Vaidik, J., and Pyle, J., concur.