

RENDERED: AUGUST 24, 2012; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-002229-MR

WILLIAM LEA

APPELLANT

v. APPEAL FROM HARRISON CIRCUIT COURT
HONORABLE JAY DELANEY, JUDGE
ACTION NO. 10-CR-00026

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION REVERSING AND REMANDING

** ** * * * * *

BEFORE: CAPERTON, DIXON, AND NICKELL, JUDGES.

CAPERTON, JUDGE: William Keith Lea appeals from the imposition of court costs entered in his final judgment in which he plead guilty to second-degree arson. On appeal, Lea asserts on argument, that the trial court erroneously imposed court costs on an indigent defendant. Upon a thorough review of the parties' arguments, the record, and the applicable law, we reverse the trial court's imposition of court costs, and remand for a determination of whether Lea is (1) a poor person as

defined by KRS 453.190(2), and (2) unable to pay court costs now, and will be unable to pay court costs in the foreseeable future.

The facts of this appeal are not contested. Lea pled guilty to one-count of second-degree arson and received a ten-year sentence. He was represented by a public advocate during the process. The trial court imposed court costs in the amount of \$155. Lea did not object at trial.

Lea now argues on appeal that the trial court erroneously imposed court costs on an indigent defendant in light of *Travis v. Commonwealth*, 327 S.W.3d 456, 459 (Ky. 2010), and that review of his unpreserved error is appropriate given *Travis*. The Commonwealth disagrees and instead argues that this matter should be remanded to the trial court to hold a hearing required by KRS 31.211(1).¹ With these arguments in mind we turn to our applicable law.

Recently, in *Maynes v. Commonwealth*, 361 S.W.3d 922 (Ky. 2012), the Kentucky Supreme Court held that “there is no prohibition on imposition of court costs on a defendant who qualifies for the services of a public defender if the trial court determines under the circumstances of that particular case that the defendant is able to pay such costs.” *Maynes* at 923. Of import, the *Maynes* court distinguished prior cases, like *Travis* when it stated:

[I]n none of those cases was the defendant's ability to pay made an issue, nor in any of them was the recoupment statute invoked. Without some reasonable basis for believing that the defendant can or will soon be able to

¹ We now deny the Commonwealth’s motion to abate this appeal.

pay, the imposition of court costs is indeed improper. Here, by contrast Maynes was to be released from custody pursuant to his diversion agreement, and so, unlike the defendants in the cases just referred to, he could reasonably be expected in the near future to acquire the means to pay the relatively modest court costs of \$130.00.

Maynes at 930.

Thus, in light of *Maynes*,

Courts may now impose court costs on an indigent defendant, “unless the court finds that the defendant is a poor person as defined by KRS 453.190(2) and that he or she is unable to pay court costs and will be unable to pay the court costs in the foreseeable future.” KRS 23A.205.

Smith v. Commonwealth, 361 S.W.3d 908, 921 (Ky. 2012).

Accordingly, we reverse the trial court's imposition of court costs, and remand for a determination of whether Lea is (1) a poor person as defined by KRS 453.190(2), and (2) unable to pay court costs now, and will be unable to pay court costs in the foreseeable future.

In light of the aforementioned we reverse and remand this matter for further proceedings not inconsistent with this opinion.

ALL CONCUR.

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