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IN THE
COURT OF APPEALS OF INDIANA

CORDELL L. LASTER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0612-CR-1148
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable David A. Shaheed, Judge
Cause No. 49G14-0604-FD-76200

July 13, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Cordell L. Laster appeals from the trial court's order that he pay a $200 drug interdiction fee following his guilty plea for Possession of Marijuana, as a Class D felony. He raises a single issue for our review, namely, whether the court abused its discretion in ordering him to pay that fee.

We affirm.

FACTS AND PROCEDURAL HISTORY

On June 20, 2006, Laster pleaded guilty to possession of marijuana, as a Class D felony. The trial court accepted Laster's plea and sentenced him to a one-year executed sentence as provided in the plea agreement. The court then found Laster indigent as to fines and court costs, but imposed a $200 drug interdiction fee to be paid by February 13, 2007. Laster, by pauper counsel, objected to the fee, but the court overruled that objection. The court gave Laster's counsel permission to file a supplemental brief on the issue of the constitutionality of the drug interdiction fee.

Subsequently, Laster filed a Motion to File a Belated Notice of Appeal. In granting that motion, the court found that Laster's "failure to file a Notice of Appeal within thirty days of the date of sentencing is not the fault of the defendant" and that he had "demonstrated diligence in requesting an appeal of his sentence." This appeal ensued.

DISCUSSION AND DECISION

Laster first contends that the trial court erred in imposing a drug interdiction fee without first having an indigency hearing. Indiana Code Section 33-37-5-9 (formerly

Section 33-19-6-9) provides, in relevant part: "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." Courts are obliged to respect the plain language of a statute. Taylor v. State, 786 N.E.2d 285, 287 (Ind. Ct. App. 2003) (citing Sholes v. Sholes, 760 N.E.2d 156, 159 (Ind. 2001)). Indiana courts presumptively treat the word "shall" as mandatory unless it appears clear from the context or purpose of the statute that the legislature intended a different meaning. Id.

In the context of Indiana Code Section 33-37-5-9, the term "shall" requires the imposition of at least a $200 fee when a person is convicted of a crime under Indiana Code Chapter 35-48-4. Id. (discussing Ind. Code § 33-19-6-9). Because Laster was convicted of possession of marijuana, as a Class D felony, under Indiana Code Section 35-48-4-11, the imposition of at least a $200 fee was mandatory. Id. See Ind. Code § 33-37-5-9(b) (2004). Further, because a fee of at least $200 is mandatory, the trial court is required to impose it regardless of a defendant's ability to pay it. Id. at 287-88. For this reason, the trial court's duty to examine a defendant's ability to pay is not triggered unless the trial court imposes a fee greater than $200. Id. at 288.

Laster does not address the clear language of the statute or attempt to distinguish this case from our holding in Taylor. Instead, Laster argues that his appeal on this issue is controlled by Briscoe v. State, 783 N.E.2d 790 (Ind. Ct. App. 2003), Clenna v. State, 782 N.E.2d 1029 (Ind. Ct. App. 2003), and Goffinet v. State, 775 N.E.2d 1227 (Ind. Ct. App. 2002), trans. denied. But in Briscoe we did not address the application of a court-

imposed $200 drug interdiction fee, see Briscoe, 783 N.E.2d at 792 n.2, and the holdings of Clenna do not implicate Indiana Code Section 33-37-5-9, see Clenna, 782 N.E.2d at 1035. Further, in Goffinet we reversed the trial court's imposition of a $2,000 drug interdiction fee both because that fee was above the statutory limit of $1,000 and because the trial court did not consider the defendant's ability to pay a heightened fee. See Goffinet, 775 N.E.2d at 1235. Hence, each of those cases is inapposite to the facts of Laster's case.

Laster also argues that the trial court's requirement that he pay his drug interdiction fee by February 13, 2007, is outside of the trial court's jurisdiction. Specifically, Laster asserts that "[i]t appears that [he] would have completed his one year term before the end of 2006[,] [assuming he received good credit time.]" Appellant's Brief at 7-8. As such, Laster continues, "the fact that [he would have] served his entire one year sentence divested the trial court of its power to subsequently consider whether [he] was indigent." Id. at 7. In support, Laster cites McRoy v. State, 794 N.E.2d 539, 543 (Ind. Ct. App. 2003), aff'd on reh'g 798 N.E.2d 521, in which we held that a trial court had no authority to conduct an additional indigency hearing more than seven months after the defendant had completed his sentence.

Again, the case law Laster relies on is inapposite. Here, the trial court did not schedule a new indigency proceeding to be held on February 13, 2007; rather, the court merely ordered Laster to pay his $200 fee by that date. On rehearing in McRoy, we clarified that "we did not find that the trial court erred in ordering payment of costs and fines" at the later date, but only in ordering an additional indigency proceeding. McRoy,

798 N.E.2d at 522. As such, the trial court's order here is consistent with our holding in McRoy. In any event, Laster was ordered to serve 365 days with 108 days of credit time on June 20, 2006. February 13, 2007, falls within the time frame of Laster's executed sentence. Thus, we cannot say that the court erred in its imposition of the $200 drug interdiction fee required by Indiana Code Section 33-37-5-9.

Affirmed.

RILEY, J., and BARNES, J., concur.