



Frederick Hampton appeals the imposition of a \$100 public defender fee. Hampton raises one issue which we revise and restate as whether the trial court abused its discretion by imposing a \$100 public defender fee. We affirm.

The relevant facts follow. On January 29, 2010, the State charged Hampton with: Count I, residential entry as a class D felony; Count II, domestic battery as a class D felony; Count III, battery as a class D felony, Count IV, domestic battery as a class A misdemeanor; Count V, battery as a class A misdemeanor; and Count VI, invasion of privacy as a class A misdemeanor.

On February 5, 2010, the court held an initial hearing, and Hampton requested a public defender and an indigency hearing. The court appointed a public defender. Specifically, a chronological case summary (“CCS”) entry dated February 5, 2010, states:

Def. requests P.D.; indig. hrg.  
DEF. INDIG., P.D. APPOINTED; ASSESS PD FEE: Y / N  
Defendant in person and by counsel CHARLES WHITE.

Appellant’s Appendix at 5.

On February 18, 2010, the court held a pretrial conference. That same day, A.J. Reiber filed an appearance form. A CCS entry dated that same day states: “DEFENSE ATTORNEY: 20537 REIBER ANTOLIN” and “Defendant in person and by counsel CARDELLA.” Id. at 6. On March 26, 2010, Reiber filed a motion for continuance, which the court granted.

A CCS entry dated April 14, 2010, indicates that a pretrial conference was held and listed “DEFENSE ATTORNEY: 20537 REIBER ANTOLIN” and that Hampton

appeared “in person and by counsel CARDELLA.” *Id.* at 7. On May 12, 2010, the court held a pretrial conference and Hampton appeared with Reiber. On June 29, 2010, Reiber filed a motion for continuance, which the court granted. On July 7, August 26, and September 9, 2010, the court held pretrial conferences, and Hampton appeared with Reiber.

On September 23, 2010, the State filed a motion to dismiss Counts II, III, IV, and VI, which the court granted. On November 24 and December 8, 2010, the court held pretrial conferences, and Hampton appeared with Reiber.

On January 19, 2011, Hampton waived trial by jury. After a bench trial, the court found Hampton guilty of Count I, residential entry as a class A misdemeanor,<sup>1</sup> and Count V, battery as a class A misdemeanor. The court imposed identical sentences of 365 days with 293 days suspended for Count I and Count V and ordered that the sentences be served concurrent with one another. The court also imposed a supplemental public defender fee of \$100.

The issue is whether the trial court abused its discretion by imposing a \$100 public defender fee. Hampton concedes that “[i]n certain circumstances, Indiana law provides for assessment of a public defender fee upon a defendant who has been provided counsel at public expense, in order to reimburse the county financially responsible for the indigent defendant’s legal representation.” Appellant’s Brief at 4 (citing Ind. Code §§ 35-33-7-6; 33-9-11.5-6; and 33-19-2-3). Hampton does not argue that the trial court

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<sup>1</sup> The abstract of judgment contains sentencing comments which state: “Count 1 Residential Entry Judgment Entered as Class A misdemeanor.” Appellant’s Brief at 7.

failed to find that he had the ability to pay or challenge the court's calculation of \$100. Rather, Hampton argues that he "was represented by private counsel before, during and after trial." Id. at 3. Hampton argues that "Private counsel Antolin Reiber of the Reiber Law Office entered his appearance on Mr. Hampton's behalf on February 18, 2010, and represented him thereafter throughout the trial and sentencing hearing." Id. at 4. Hampton argues that "[n]either Charles White nor any other public defender entered an appearance on behalf of Mr. Hampton, and there is no further mention of Charles White or the Marion County Public Defender after the initial hearing, either in the case chronology or in motions filed or in the transcripts of the trial and sentencing hearing." Id. Hampton argues that "[w]hile the trial court in this case did appoint a public defender for [him] initially, the record does not show that the attorney or the Marion County Public Defender Agency ever entered an appearance on his behalf or provided any active representation or legal services to [him] at all." Id. at 5.

The State argues that "the record reflects [Hampton] was appointed a pauper attorney, and there is no indication this order was withdrawn by the court and a private-paid attorney instituted into the proceedings." Appellee's Brief at 6. The State points out that the address for A.J. Reiber, 151 North Delaware Street, is located at the same address as the Public Defender. The State also points out that "[a] search in the Indiana Roll of Attorneys for 'CARDELLA' resulted in one result, that of 'MR. JEFFREY RICHARD CARDELLA, MARION COUNTY PUBLIC DEFENDER'S OFFICE, 151 NORTH DELAWARE STREET, SUITE 200, INDIANAPOLIS IN.'" Id. The State notes that the

trial and sentencing transcripts “list ‘Antolin J. Reiber, Esq. Marion County Public Defender’s Office, 151 North Delaware Street, Indianapolis, IN 46204’ as counsel for [Hampton].” Id. Lastly, the State reiterates that “[t]here are no case chronology notations that the court appointed public defender order was dismissed by the court.” Id.

In his reply brief, Hampton argues that Reiber was not a public defender and that his address is a different suite from that of the Public Defender’s office and is located in a building that “houses many different businesses and offices, including many private law offices.” Appellant’s Reply Brief at 1. Hampton also argues that Reiber never identified himself as a public defender. Hampton asserts that “[i]n three motions he filed herein, Mr. Reiber referred to legal matters in other counties in which he was involved, further indication of the private nature of his law practice.” Id. at 2. Hampton points out that the name Cardella appeared two times in the CCS but that the same CCS entries listed Reiber as the defense attorney. Hampton also argues that the trial and sentencing transcripts containing “a line reading ‘Marion County Public Defender’s Office’ below Mr. Reiber’s name” is not dispositive as there “is evidence that other errors were made by the court reporter in captioning the transcripts.” Id. at 3-4.

“[S]entencing decisions, including decisions to impose restitution, fines, costs, or fees, are generally left to the trial court’s discretion.” Kimbrough v. State, 911 N.E.2d 621, 636 (Ind. Ct. App. 2009) (citing Banks v. State, 847 N.E.2d 1050, 1051 (Ind. Ct. App. 2006), trans. denied). “If the trial court imposes fees within the statutory limits, there is no abuse of discretion.” Id. Indiana statutes provide authority for a trial court to

impose a fee on a defendant for costs of appointed representation. Specifically, Ind. Code § 35-33-7-6(c) provides: “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).” “This statute contemplates that trial courts will order the defendant to pay the \$100 fee at the initial hearing, see Ind. Code § 35-33-7-6(a), but it does not prohibit trial courts from imposing the fee at other stages of the proceedings.” Davis v. State, 843 N.E.2d 65, 68 (Ind. Ct. App. 2006). Ind. Code § 33-37-2-3(e) provides that if after an indigency hearing “the court determines that a convicted person is able to pay part of the costs of representation, the court shall order the person to pay an amount of not more than the cost of the defense services rendered on behalf of the person.” Finally, Ind. Code § 33-40-3-6(a) provides:

If at any stage of a prosecution for a felony or a misdemeanor the court makes a finding of ability to pay the costs of representation under section 7 of this chapter, the court shall require payment by the person or the person’s parent, if the person is a child alleged to be a delinquent child, of the following costs in addition to other costs assessed against the person:

- (1) Reasonable attorney’s fees if an attorney has been appointed for the person by the court.
- (2) Costs incurred by the county as a result of court appointed legal services rendered to the person.

The record reveals that Hampton requested a public defender at the initial hearing on February 5, 2010, and the court appointed a public defender. The public defender appeared with Hampton at this initial hearing and provided some service to Hampton.

Hampton does not point to the record and our review does not reveal that the public defender ever withdrew. Under the circumstances, we cannot say that the trial court abused its discretion in imposing a fee of \$100.

For the foregoing reasons, we affirm the trial court's imposition of a \$100 public service defender fee.

Affirmed.

BAKER, J., and KIRSCH, J., concur.