

**IN THE SUPERIOR COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

No. 893 MDA 2017

COMMONWEALTH OF PENNSYLVANIA,

Appellee,

v.

WILLIAM DIAZ,

Appellant.

BRIEF FOR APPELLANT WILLIAM DIAZ

Appeal from Order of the Court of Common Pleas
of Lebanon County, Pennsylvania dated April 24, 2017

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TABLE OF CONTENTS

STATEMENT OF JURISDICTION.....	1
ORDER IN QUESTION.....	2
STATEMENT OF THE SCOPE AND STANDARD OF REVIEW	4
STATEMENT OF THE QUESTIONS PRESENTED.....	5
STATEMENT OF THE CASE.....	6
A. Form of Action and Procedural History	6
B. Factual Background.....	8
SUMMARY OF THE ARGUMENT	11
ARGUMENT	13
A. The Court of Common Pleas Improperly Held Mr. Diaz in Civil Contempt and Imprisoned Him for Nonpayment of Fines and Costs Without Inquiring into Whether Mr. Diaz’s Nonpayment Was Willful.....	13
B. The Court of Common Pleas Denied Mr. Diaz His Right to Counsel.....	17
1. The Pennsylvania Rules of Criminal Procedure Provide a Right to Counsel Prior to Incarceration for Nonpayment of Fines and Costs.	17
2. The Due Process Clause of the Fourteenth Amendment Requires Counsel Prior to Imprisonment for Nonpayment of Fines and Costs.....	19
3. Mr. Diaz Did Not Waive His Right to Counsel.	23
C. The Court of Common Pleas Abused Its Discretion By Holding Mr. Diaz in Contempt When the Evidence Showed That He Was Destitute and Lacked the Ability to Pay.....	25

D. The Court of Common Pleas Abused Its Discretion By Imposing A Purge Condition Mr. Diaz Could Not Meet.....	29
E. The Court of Common Pleas Abused Its Discretion By Placing Mr. Diaz on An Unreasonable Payment Plan in Light of His Financial Circumstances.....	31
REQUEST FOR PUBLICATION	34
CONCLUSION	36

TABLE OF AUTHORITIES

Cases

<i>Alexander v. Johnson</i> , 742 F.2d 117 (4th Cir. 1984).....	32
<i>Amrhein v. Amrhein</i> , 903 A.2d 17 (Pa. Super. Ct. 2006)	28
<i>Bacik v. Commonwealth</i> , 434 A.2d 860 (Pa. Commw. Ct. 1981)	17
<i>Barrett v. Barrett</i> , 368 A.2d 616 (Pa. 1977).....	14, 29, 30
<i>Bearden v. Georgia</i> , 461 U.S. 660 (1983).....	14
<i>Commonwealth ex rel. Bashore v. Leininger</i> , 2 Pa. D. & C.3d 523 (1977).....	16
<i>Commonwealth ex. rel. Parrish v. Cliff</i> , 304 A.2d 158 (Pa. 1973)	15, 32, 36
<i>Commonwealth v. Baker</i> , 766 A.2d 328 (Pa. 2001)	4
<i>Commonwealth v. Cannon</i> , 954 A.2d 1222 (Pa. Super. Ct. 2008).....	25
<i>Commonwealth v. Dorsey</i> , 476 A.2d 1308 (Pa. Super. Ct. 1984)	15
<i>Commonwealth v. Eggers</i> , 742 A.2d 174 (Pa. Super. Ct. 1999)	15, 25, 36
<i>Commonwealth v. Farmer</i> , 466 A.2d 677 (Pa. Super. Ct. 1983)	17
<i>Commonwealth v. Gaskin</i> , 472 A.2d 1154 (Pa. Super. Ct. 1984)	25
<i>Commonwealth v. Hernandez</i> , 917 A.2d 332 (Pa. Super. Ct. 2007)	26, 32
<i>Commonwealth v. Houtz</i> , 856 A.2d 119 (Pa. Super. Ct. 2004)	24
<i>Commonwealth v. Konias</i> , 136 A.3d 1014 (Pa. Super. Ct. 2016) (same)	26
<i>Commonwealth v. Lepre</i> , 18 A.3d 1225 (Pa. Super. Ct. 2011)	26
<i>Commonwealth v. Mead</i> , 446 A.2d 971 (Pa. Super. Ct. 1982).....	26
<i>Commonwealth v. Moody</i> , 125 A.3d 1 (Pa. 2015).....	4
<i>Commonwealth v. Phillips</i> , 93 A.3d 847 (Pa. Super. Ct. 2014)	24

<i>Commonwealth v. Regan</i> , 359 A.2d 403 (Pa. Super. Ct. 1976)	26
<i>Commonwealth v. Rosser</i> , 407 A.2d 857 (Pa. Super. Ct. 1979).....	14
<i>Commonwealth v. Ruiz</i> , 470 A.2d 1010 (Pa. Super. Ct. 1984).....	16
<i>Crosby Square Apartments v. Henson</i> , 666 A.2d 737 (Pa. Super. Ct. 1995) ...	26, 34
<i>Durant v. Durant</i> , 489 A.2d 266 (Pa. Super. Ct. 1985).....	29
<i>Foucha v. Louisiana</i> , 504 U.S. 71 (1992).....	21
<i>Fuller v. Oregon</i> , 417 U.S. 40 (1974).....	32
<i>Gerlitzki v. Feldser</i> , 307 A.2d 307 (Pa. Super. Ct. 1973) (en banc).....	27
<i>Groff v. Elizabeth Twp., Lancaster County</i> , 420 A.2d 791 (Pa. Commw. Ct. 1980)	18
<i>Hyle v. Hyle</i> , 868 A.2d 601 (Pa. Super. Ct. 2005).....	30, 31
<i>Johnson v. Zerbst</i> , 304 U.S. 458 (1938)	22
<i>Koziatek v. Marquett</i> , 484 A.2d 806 (Pa. Super. Ct. 1984).....	27
<i>Lachat v. Hinchcliffe</i> , 769 A.2d 481 (Pa. Super. Ct. 2001).....	13
<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976)	20
<i>Stein Enterprises, Inc. v. Golla</i> , 426 A.2d 1129 (Pa. 1981)	28, 34
<i>Turner v. Rogers</i> , 564 U.S. 431 (2011)	19, 20, 22

Statutes

18 Pa. Cons. Stat. § 3929	6
35 P.S. § 780-113	6
42 Pa. Cons. Stat. § 742	1
42 Pa. Cons. Stat. § 9730	11, 14, 17

Other Authorities

Pa. Interbranch Comm’n on Gender, Racial and Ethnic Fairness, “Ending Debtors’ Prisons in Pennsylvania: Current Issues in Bail and Legal Financial Obligations: A Practical Guide for Reform”	21, 35
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------

Rules

Pa.R.A.P. 1925	7
Pa.R.A.P. 3519	34
Pa.R.C.P. 240	28
Pa.R.Crim.P. 121	23
Pa.R.Crim.P. 122	17, 18, 23
Pa.R.Crim.P. 706	11, 14, 17, 32

STATEMENT OF JURISDICTION

Because this is an appeal from the Lebanon County Court of Common Pleas's entry of a final order of contempt, this Court has jurisdiction under 42 Pa. Cons. Stat. § 742.

ORDER IN QUESTION

The trial court's order consisted of an oral ruling from the bench and a form completed by the court. The text of the oral ruling follows:

Judge: The Court makes the following findings. This is the second time this has been scheduled. One previous bench warrant. Payments were set at \$100 a month per an agreement in January 2016. He's failed to pay since a year ago, over a year ago - March. With a balance of \$710.33 in one case and \$1,636.00 in another. The Court finds the Defendant in contempt and directs he be incarcerated in the Lebanon County Correctional Facility for a period of thirty days. He may purge himself of this contempt on number twenty-nine by paying \$100 on the account. And on number thirty by paying \$150. The Court has no objection to immediate work release. All right.

CDU Officer: Your Honor, if you could add a Court Ordered amount.

Judge: And the Court ordered amount of \$100 a month.

(R. 38-39a).

White: LCCF; Yellow: Clerk of Courts/Prothonotary; Pink: Adult Probation/Other

Lebanon County Clerk of Courts-Prothonotary
Sentence/Commitment Form

DEFENDANT: William Perez Diaz
OFFENSE: F + C Contempt

ACTION No. CP000002-000 200
S/L OTN: L749676-4
SENTENCING JUDGE: SA. Kline

SENTENCE: _____

L749676-4 } LCCF - 30 days
puige, ~~1000~~ 100-
bal 100 mth

CP. 38-CR-1175-2013 30 days
L 7941124-1 150-
100 mth

SPECIAL CONDITIONS: _____

RECOMMENDED FOR WORK RELEASE: YES X / NO _____

ACUTE MEDICAL PROBLEMS: YES _____ / NO _____

DETAINERS: _____

HEARING DATE: _____

BAIL AMOUNT: _____

BENCH WARRANT: _____

OTHER REMARKS: _____

Imv / 04/24/17
(CLERK) (DATE) (COURT STENOGRAPHER)

PLEASE CONTACT LEBANON COUNTY CORRECTIONAL FACILITY UPON DEFENDANTS RELEASE

STATEMENT OF THE SCOPE AND STANDARD OF REVIEW

When reviewing a finding of contempt, this Court exercises an abuse of discretion standard of review. *See Commonwealth v. Baker*, 766 A.2d 328, 331 (Pa. 2001). A trial court abuses its discretion if it committed an error of judgment that “overrides or misapplies the law.” *Id.* The trial court also abuses its discretion if the evidence in the record shows that its judgment “is manifestly unreasonable or lacking in reason.” *Id.*

This Court reviews the trial court’s procedures *de novo*, as those issues are questions of law. *See Commonwealth v. Moody*, 125 A.3d 1, 6 (Pa. 2015). Accordingly, the Court uses a plenary scope of review for those issues. *Id.*

STATEMENT OF THE QUESTIONS PRESENTED

The principal questions presented on appeal are:

1. Did the trial court err by holding Mr. Diaz in civil contempt for failure to pay his court fines and costs and incarcerating him without inquiring into his ability to pay?
2. Did the trial court err by incarcerating Mr. Diaz for civil contempt without either providing him with counsel or obtaining a knowing, intelligent, and voluntary waiver of that right?
3. Did the trial court abuse its discretion by holding Mr. Diaz in contempt when the evidence on the record demonstrated that he was unable to pay?
4. Did the trial court abuse its discretion by setting a dollar amount by which Mr. Diaz could purge his contempt and be released from incarceration without finding beyond a reasonable doubt that Mr. Diaz had the present ability to comply with the Court's order and meet that purge condition?
5. Did the trial court err by placing Mr. Diaz on a payment plan without inquiring into his financial circumstances and determining that the ordered payment was within his means and did not unreasonably impose a financial hardship?

The answer to each of these questions is “yes.” The trial court committed clear error by – implicitly – ruling otherwise.

STATEMENT OF THE CASE

A. Form of Action and Procedural History

This is a direct appeal from the Lebanon County Court of Common Pleas challenging the finding of contempt, sentence of imprisonment, and imposition of a payment plan entered against Appellant William Diaz on April 24, 2017.

On July 3, 2013, Mr. Diaz pled guilty in the Lebanon County Court of Common Pleas to one count of retail theft, 18 Pa. Cons. Stat. § 3929(a)(1),¹ and on December 18, 2014, he pled guilty to one count of use/possession of drug paraphernalia, 35 P.S. § 780-113(a)(32).² (R. 6a; R. 22a). In the first matter, CP-38-CR-1838-2012, the Honorable Judge John Tylwalk ordered Mr. Diaz to pay a \$400 fine, \$23.98 in restitution, and \$1686.35 in costs. (R. 18a). In matter CP-38-CR-1175-2013, the Honorable Judge Samuel Kline ordered Mr. Diaz to pay a \$100 fine and \$1,536 in costs. (R. 31a). As a result of payments to the court, Mr. Diaz currently owes \$2,346.33 in total fines and costs.³

The trial court scheduled Mr. Diaz for a Fines and Costs Contempt hearing on January 30, 2017, because he had failed to make payments on the fines and costs he owed. (R. 9a). Mr. Diaz did not appear for that hearing, and the court issued a bench warrant for his arrest. (R. 10a). Mr. Diaz was subsequently arrested

¹ CP-38-CR-1838-2012

² CP-38-CR-1175-2013

³ Mr. Diaz had already paid the restitution in full. (R. 18a).

on this warrant and brought before Judge Kline for a bench warrant hearing on April 6, 2017. (R. 10a). Judge Kline set bail at \$200 and ordered Mr. Diaz to appear for the court's next Fines and Costs Contempt hearing on April 24, 2017. (R. 33a; R. 35a). Mr. Diaz did not have \$200 for bail and therefore remained incarcerated. (R. 11a; R. 55a). He was not provided with counsel. (R. 40a).

At hearing on April 24, Judge Kline held Mr. Diaz in civil contempt, sentenced him to 30 days in jail, and set a purge condition of \$250 (\$100 for one docket and \$150 for the other). (R. 11a; R. 38-39a; R. 41a). The court also ordered Mr. Diaz to pay his fines and costs at a rate of \$100 per month. (R. 39a; R. 41a).

Mr. Diaz subsequently engaged undersigned counsel and filed a Petition for a Writ of Habeas Corpus with the trial court on May 2, 2017, with a request for hearing. (R. 42-48a). However, because of the time Mr. Diaz had already spent in jail, he was released on May 4, before the court held a hearing, and Mr. Diaz then withdrew the petition. (R. 12a). Mr. Diaz filed a timely appeal from the April 24, 2017 orders (1) finding him in contempt and jailing him; and (2) ordering him to pay \$100 a month toward his fines and costs. (R. 12a; R. 69a). On June 9, 2017, Mr. Diaz filed a Concise Statement of Errors Complained of on Appeal. (R. 13a). On August 1, 2017, in place of an opinion pursuant to Pa.R.A.P. 1925, the trial court issued an "Amended Order" that affirmed the April 24 order without explanation. (App. A.).

B. Factual Background

Mr. Diaz was scheduled for a Fines and Costs Contempt hearing on January 30, 2017, because he had failed to make the \$100 per month payments previously ordered by the Lebanon County Court of Common Pleas. (R. 9a). He failed to appear for that hearing and the court issued a bench warrant for his arrest. (R. 10a). He was arrested and brought before the Honorable Samuel Kline on April 6, 2017. (R. 10a). Judge Kline ordered him to appear at the next Fines and Costs Contempt hearing on April 24, 2017, and told him, “you have the right to an attorney, if you can’t afford one, upon request one will be provided.”⁴ (R. 33a). He then vacated the bench warrant and told Mr. Diaz that he was setting bail because release on recognizance was not an option in light of the \$710 he owed in one case and \$1,636 in the other. (R. 34a).

Mr. Diaz responded: “I have someone in Reading that can put maybe fifty to a hundred dollars and (inaudible) maybe twenty dollars.” (R.35a). Judge Kline responded that he would be “a nice guy and put a hundred dollars in bail on each one of these [two dockets]. Cash. And that’s being very generous considering your

⁴ The court digitally recorded these proceedings, and the court reporter was subsequently unable to hear certain statements.

prior history” of missing the January fines and costs hearing. (R. 35a). Mr. Diaz thanked him, and Judge Kline reiterated that it was “cash only.”⁵ (R. 35a).

Mr. Diaz could not come up with the \$200 necessary for bail, so he sat in jail from April 6 until the April 24 Fines and Costs Contempt hearing. (R. 11a). At that hearing, Mr. Diaz was unrepresented by counsel, notwithstanding that he had not executed any waiver of that right. (R. 38a). The Commonwealth was represented by staff from the Lebanon County Adult Probation Collections and Disbursement Unit, referred to on the transcript as “CDU Officer.” (R. 38a).

When the case was called, the CDU Officer explained to Judge Kline that this was the second time Mr. Diaz had been scheduled for a fines and costs hearing, that the court had issued one bench warrant for his arrest, and that he had previously agreed in January 2016 to pay \$100 per month. (R. 38a). Judge Kline then asked Mr. Diaz, “William, did anybody come with any money?” (R. 38a). Mr. Diaz responded that no one came that day with any money to pay his fines and costs, but that he had received a letter from a friend stating that he had a possible job available constructing pallets in Reading, Pennsylvania. (R. 38a; R. 71a). He

⁵ The court also alluded to a lecture he would give all of the defendants “at one time at the end” of the bench warrant proceedings, although those statements were not included in the transcript.

also offered to sell his blood plasma (as he had in the past) in order to make money to pay the court.⁶ (R. 71a).

Without further inquiry, the court held Mr. Diaz in contempt and directed “that he be incarcerated in the Lebanon County Correctional Facility for a period of thirty days. He may purge himself of this contempt on [docket] number twenty-nine by paying \$100 on the account. And on [docket] number thirty by paying \$150. The Court has no objection to immediate work release. All right.” (R. 38-39a). The CDU Officer interjected and requested a monthly payment plan, and the court “ordered [the] amount of \$100 a month.” (R. 39a).

As explained in his Petition for a Writ of Habeas Corpus, if asked, Mr. Diaz could have established at that hearing that he had no income or other means aside from selling his blood plasma, had been receiving public benefits, had recently been homeless, and was entirely dependent on financial support from a friend and the friend’s mother because he was unemployed and had been unable to maintain a job. (R. 45a; R. 55a). Mr. Diaz also could have explained, as evidenced on the docket, that he had made payments in 2015 and 2016 when he was employed, and that he intended to continue making payments when he was employed once again and able to meet his basic life needs. (R. 16a; R. 53a).

⁶ Mr. Diaz’s statements were initially listed as “inaudible” on the transcript. The trial court granted a Motion to Amend the Record to reflect Mr. Diaz’s statements at the hearing. (R. 71a).

Mr. Diaz was given credit for the time he had spent in jail on the bench warrant, and he was released on May 4. Two days before he was released, counsel filed a Petition for a Writ of Habeas Corpus. (R. 12a). However, the court scheduled the hearing on the Petition for after Mr. Diaz was released. Since the court could no longer grant the relief sought, Mr. Diaz subsequently withdrew the Petition. (R. 12a).

SUMMARY OF THE ARGUMENT

Under Pennsylvania and United States Supreme Court decisions dating back to the 1970s, courts cannot jail defendants for failure to pay without first holding a hearing and determining that the defendant has the ability to pay but is willfully refusing to do so. At the time, these decisions were intended to put an end to “debtors’ prisons”—the practice of jailing people who were too poor to pay their fines and costs. Pennsylvania’s Rules of Criminal Procedure forbid a court from jailing a person too poor to pay his fines and costs and from imposing a payment obligation that a defendant cannot reasonably meet. They require the court to make a determination “that the defendant is financially able to pay the fine or costs.” Pa.R.Crim.P. 706(A). *See also* 42 Pa. Cons. Stat. § 9730(b). Unfortunately, the Rule provides no guidance to judges about *how* to determine when a defendant is contemptuously refusing to pay or what is a reasonable payment plan.

The Lebanon County Court of Common Pleas held Mr. Diaz in civil contempt and imprisoned him for failure to pay \$100 per month without making any determination that Mr. Diaz was financially able to pay the fine or costs. And in fact, the evidence before the court was that he had no present source of income other than selling his blood plasma. There was no evidence that he willfully refused to pay his fines and costs. The court then set a condition for his release that he could not meet, without determining beyond a reasonable doubt that he was able to pay the so-called “purge” amount that would end his imprisonment, and it ordered him back on the same payment plan. Moreover, Mr. Diaz had a right to counsel at this hearing, but the trial court neither appointed counsel nor obtained a knowing, voluntary, and intelligent waiver of that right. The trial court violated the rules of court and due process by failing to inquire into Mr. Diaz’s financial status and by not providing him with counsel. By holding him in contempt, on a record that showed he was unable to pay, setting a purge amount that he could not afford, and placing him on an equally unaffordable payment plan, the court abused its discretion by imposing manifestly unreasonable financial conditions that were not supported by the evidence in the record.

Through this case and a companion case (894 MDA 2017), this Court should provide clear guidance to the Court of Common Pleas for Lebanon County and to similar courts, as it has in different contexts, to ensure that court collection

procedures comply with both the Rules and the Constitution. Accordingly, this Court should vacate the trial court's April 24 order, and remand for a new proceeding with instructions on how to handle contempt proceedings when indigent defendants have failed to pay fines and costs.

ARGUMENT

A. The Court of Common Pleas Improperly Held Mr. Diaz in Civil Contempt and Imprisoned Him for Nonpayment of Fines and Costs Without Inquiring into Whether Mr. Diaz's Nonpayment Was Willful.

In holding Mr. Diaz in "contempt" and sentencing him to jail, the trial court implicitly found Mr. Diaz's failure to pay "willful," but the court failed to actually inquire into whether he could pay, as required by the law. The contempt finding should be vacated.

The civil contempt power allows a court to use sanctions—including imprisonment—to compel compliance with a court order from an individual who has willfully failed to comply. To hold a defendant in civil contempt, a court must find by a preponderance of the evidence: "(1) that the contemnor had notice of the specific order or decree which he is alleged to have disobeyed; (2) that the act constituting the contemnor's violation was volitional; and (3) that the contemnor acted with wrongful intent." *Lachat v. Hinchcliffe*, 769 A.2d 481, 488-89 (Pa. Super. Ct. 2001). In other words, the key question is whether a defendant willfully failed to comply with the court order. *See Barrett v. Barrett*, 368 A.2d 616, 620

(Pa. 1977) (civil contempt requires finding that contemnor “willfully and contemptuously violated the original orders”); *Commonwealth v. Rosser*, 407 A.2d 857, 859, 860 n.8 (Pa. Super. Ct. 1979) (noting that finding civil contempt for nonpayment of fines and costs requires evidence of willfulness of nonpayment, as only a “non-indigent person who willfully fails to pay fines or costs” may be imprisoned).

These principles are codified in both the Rules of Criminal Procedure, which prohibit incarceration “unless it appears after hearing that the defendant is financially able to pay the fine or costs,” Pa.R.Crim.P. 706(A), and in statute. *See* 42 Pa. Cons. Stat. § 9730(b)(2) (a court can impose imprisonment only if the “judge determines that the defendant is financially able to pay the fine or costs”). Without this determination, there can be no finding that a defendant willfully failed to pay.

Those rules originate in our commitment to fairness and due process. The United States Supreme Court has explained that imprisoning indigent defendants who are unable to pay their fines and costs is illegal unless the court first “inquire[s] into the reasons for the failure to pay” to determine if the defendant “willfully refused to pay or failed to make sufficient bona fide efforts legally to acquire the resources to pay.” *Bearden v. Georgia*, 461 U.S. 660, 672 (1983). Even before *Bearden*, our own Supreme Court held unconstitutional the practice of that

jailing indigent defendants for nonpayment, holding that they “must be given the opportunity to establish that they are unable to pay the fine. Upon a showing of indigency, [they] should be allowed to make payments in reasonable installments.” *Commonwealth ex. rel. Parrish v. Cliff*, 304 A.2d 158, 161 (Pa. 1973) (granting a writ of habeas corpus for four defendants who were jailed for failure to pay fines, costs, and restitution).

For that reason, this Court has held that a trial court cannot find a probationer in violations of the terms of probation for failure to make payments unless the court has made an affirmative inquiry “into the reasons surrounding the [defendant’s] failure to pay, followed by a determination of whether the [defendant] made a willful choice not to pay.” *Commonwealth v. Eggers*, 742 A.2d 174, 176 (Pa. Super. Ct. 1999). *See also Commonwealth v. Dorsey*, 476 A.2d 1308, 1312 (Pa. Super. Ct. 1984) (defendant’s opportunity to provide evidence of indigence not sufficient for finding of willfulness, as “the lower court did not inquire into the reasons for appellant’s failure to pay or did it make any findings pertaining to the willfulness of appellant’s omission as required by *Bearden*”).

Such an inquiry is necessary because the court needs to look at a defendant’s entire financial picture when determining whether that defendant is able to pay. For example, mere knowledge that a defendant is employed “cannot alone provide a sufficient picture of appellant’s finances so that an intelligent finding as to his

ability to pay the fines and costs imposed can be made,” *Commonwealth v. Ruiz*, 470 A.2d 1010, 1012 (Pa. Super. Ct. 1984), and even if the court is “well acquainted” with the defendant, it fails to hold an appropriate hearing when it asks “no questions that would have established the financial condition of [the defendant],” including information about the defendant’s salary and “day to day expenses.” *Commonwealth ex rel. Bashore v. Leininger*, 2 Pa. D. & C.3d 523, 528-29 (1977) (applying the same principle to incarceration for failure to pay a traffic ticket).

Here, the trial court did not inquire into the reasons for Mr. Diaz’s default, but only asked if anyone came with money to the Fines and Costs Contempt hearing. (R. 38a). Although the court did not inquire about Mr. Diaz’s financial condition, Mr. Diaz himself tried to explain that he had no present income, apart from what he could earn selling his blood plasma, and that he had a possibility of work in the near future. (R. 38a). The court already knew, of course, that Mr. Diaz had spent the last three weeks in jail after the court set \$200 bail, from which the court could have inferred that he did not have and could not get \$250, even if the court did not recall what Mr. Diaz had said at his prior appearance. (R. 35a).

The court did not respond to Mr. Diaz’s statements or ask any additional questions before finding him in contempt and sentencing him to jail. (R. 38-39a). This violated Pennsylvania law, which flatly prohibits jailing indigent defendants

for nonpayment of fines and costs. *See* Pa.R.Crim.P. 706(A), (D) (prohibiting imprisonment “unless it appears after hearing that the defendant is financially able to pay the fine or costs” and specifying that a defendant already on a payment plan cannot be imprisoned unless “the court finds the defendant is not indigent”); 42 Pa. Cons. Stat. § 9730(b)(2) (permitting imprisonment only if “the defendant is financially able to pay the fine or costs”).⁷ *See also* *Bacik v. Commonwealth*, 434 A.2d 860, 863 (Pa. Commw. Ct. 1981) (holding that then-active rule governing summary cases, with language identical to Rule 706, “precludes the possibility of imprisonment ever being imposed upon one whose indigency is established”).

B. The Court of Common Pleas Denied Mr. Diaz His Right to Counsel.

1. The Pennsylvania Rules of Criminal Procedure Provide a Right to Counsel Prior to Incarceration for Nonpayment of Fines and Costs.

Mr. Diaz was entitled to have counsel appointed to represent him at the contempt hearing because courts must provide counsel to any defendant facing incarceration for failure to pay fines and costs pursuant to Pa.R.Crim.P. 122(A)(2). In *Commonwealth v. Farmer*, 466 A.2d 677, 678 (Pa. Super. Ct. 1983), this Court explained that Pa.R.Crim.P. 122(A)(1), which addresses summary proceedings,

⁷ While *Bearden* permits courts to incarcerate defendants who lack the ability to pay fines and costs if no alternative form of punishment would meet the state’s interests, Pennsylvania law does *not* permit incarceration of indigent defendants who lack the ability to pay under any circumstances. *See* Pa.R.Crim.P. 706(A), (D).

requires that courts appoint counsel for indigent defendants in precisely these circumstances—contempt proceedings for nonpayment of fines and costs where jail was imposed—because there was a “likelihood that imprisonment will be imposed.” *See also id.* (Rule 122 was previously numbered Rule 316).

While the “likelihood” phrase does not appear in Pa.R.Crim.P. 122(A)(2), the only reason it is in Pa.R.Crim.P. 122(A)(1) is because there is not a right to counsel in all summary cases, and the language was intended to make clear that counsel would be provided *only* in those summary cases involving a jail sentence. *See Groff v. Elizabeth Twp., Lancaster County*, 420 A.2d 791, 792 (Pa. Commw. Ct. 1980); Pa.R.Crim.P. 122 Explanatory Comment. Thus, Pa.R.Crim.P. 122(A)(1) is intended to have a narrower scope than Pa.R.Crim.P. 122(A)(2), as the latter provides counsel in all cases before the courts of common pleas. To hold otherwise would be to require that counsel be appointed in all proceedings for nonpayment before magisterial district courts but never before the courts of common pleas (except when a defendant defaults after a summary appeal brings the case before those courts), which would be an absurd result.⁸ The only reasonable interpretation

⁸ Pa.R.Crim.P. 101(C) instructs that, “To the extent practicable, these rules shall be construed in consonance with the rules of statutory construction.” The “overarching goal of statutory interpretation is to ascertain the intent” of the Supreme Court in promulgating its rules, and “we should not interpret the statute strictly and literally if doing so would create a result that is absurd, unreasonable, or impossible to execute.” *In re K.A.P.*, 916 A.2d 1152, 1157 (Pa. Super. Ct. 2007).

is that this Court’s opinion in *Farmer* applies equally to non-summary proceedings and requires the appointment of counsel absent a knowing, voluntary, and intelligent waiver prior to incarceration for nonpayment of fines and costs.

2. The Due Process Clause of the Fourteenth Amendment Requires Counsel Prior to Imprisonment for Nonpayment of Fines and Costs.

In addition to a rules-based right to counsel, Mr. Diaz was also entitled to counsel under the Due Process Clause of the Fourteenth Amendment. Although the Sixth Amendment does not extend the right to counsel in civil contempt proceedings, the Due Process Clause does extend that right to defendants in the type of civil contempt proceedings that occurred here.

In *Turner v. Rogers*, 564 U.S. 431 (2011), the United States Supreme Court addressed whether the state was required to provide counsel to persons threatened with incarceration for failure to pay child support. While the Court approved of certain procedural alternatives to counsel in civil contempt proceedings for failure to pay child support when the opposing party is an unrepresented parent, there are particular challenges specific to the enforcement of child support owed to individuals that do not apply to “civil contempt proceedings where the underlying child support payment is owed to the State.” *Id.* at 449. When an action is brought by the state, the Court indicated it may reach a different conclusion regarding the right to counsel, as “[t]hose proceedings more closely resemble debt-collection proceedings. The government is likely to have counsel or some other competent

representative.” *Id.* at 446-47, 449. The Court’s due process analysis in *Turner* shows that Mr. Diaz was entitled to counsel prior to his incarceration.⁹

The *Turner* Court based its due process analysis on the *Mathews v. Eldridge*, 424 U.S. 319 (1976), balancing test, which requires that courts determine how much process is required by balancing: “(1) the nature of the private interest that will be affected, (2) the comparative risk of an erroneous deprivation of that private interest with and without additional or substitute procedural safeguards, and (3) the nature and magnitude of any countervailing interest in not providing additional or substitute procedural requirement[s].” *Turner*, 564 U.S. at 444-45 (internal quotation marks omitted).

Here, all of the factors weigh in favor of providing Mr. Diaz with counsel. The *Turner* Court recognized that the loss of liberty through imprisonment is a weighty interest, and indeed the freedom “from bodily restraint,” lies “at the core of the liberty protected by the Due Process Clause.” *Id.* at 445 (quoting *Foucha v.*

⁹ In the child-support context, where one unrepresented parent sought funds from another unrepresented parent, *Turner* approved of alternative procedures short of appointing counsel that would provide sufficient due process protections in civil contempt proceedings. Those procedural protections are: “(1) notice to the defendant that his ‘ability to pay’ is a critical issue in the . . . proceeding; (2) the use of a form . . . to elicit relevant financial information; (3) an opportunity at the hearing for the defendant to respond to statements and questions about his financial status . . . and (4) an express finding by the court that defendant has the ability to pay.” *Turner*, 564 U.S. at 447-48. None of these procedural protections were followed here.

Louisiana, 504 U.S. 71, 80 (1992)). Accordingly, this factor “argues strongly for the right to counsel.” *Turner*, 564 U.S. at 445.

Second, as Mr. Diaz’s case highlights, there is a substantial risk that unrepresented individuals who have not willfully refused to pay will be wrongfully held in contempt and incarcerated.¹⁰ Trial courts have an affirmative obligation to inquire into a defendant’s ability to pay, but when the court fails to do so, an unrepresented person is not in a position to speak up and explain to the court that he cannot even pay for his basic life necessities. Mr. Diaz certainly was not, which is why he attempted to placate the court by offering to sell his blood plasma to make payments towards his fines and costs. (R. 71a). When legally and factually complex scenarios arise, procedural alternatives to counsel are insufficient to allow defendants to competently respond to the court and the government representative prosecuting the contempt.

Notably, as to the third factor, court proceedings designed to collect fines and costs do not implicate the type of countervailing interest present when custodial parents seek to obtain financial support needed for the sustenance of their

¹⁰ As was recently documented by the Interbranch Commission on Gender, Racial, and Ethnic Fairness, Mr. Diaz’s case is unfortunately not an outlier. *See* Pa. Interbranch Comm’n on Gender, Racial and Ethnic Fairness, “Ending Debtors’ Prisons in Pennsylvania: Current Issues in Bail and Legal Financial Obligations: A Practical Guide for Reform” (July 10, 2017), http://www.pa-interbranchcommission.com/_pdfs/Ending-Debtors-Prisons-in-PA-Report.pdf.

children. Affording counsel to indigent defendants in these proceedings will not “create an asymmetry of representation that would alter significantly the nature of the proceeding,” “unduly slow payment to those immediately in need,” or “make the proceedings less fair overall.” *Id.* at 447. Quite the opposite, civil contempt proceedings related to fines and fees involve a government representative—in this case the CDU Officer—with significantly greater resources and expertise, creating a significant asymmetry of power when the person charged with nonpayment is uncounseled. Indeed, the *Turner* Court noted several times that the presence of a government representative on the other side would significantly alter its analysis. *See, e.g., id.* at 449 (citing *Johnson v. Zerbst*, 304 U.S. 458, 462-463 (1938)).

Thus, a right to counsel in this context would make the proceedings more fair overall, and would help correct errors in a system where the asymmetry of power disfavors indigent defendants. While there would be an increased cost in providing counsel, that cost would be counterbalanced by preventing the futile expense of coercively jailing indigent defendants who, like Mr. Diaz, lack the ability to pay. Moreover, indigent defendants not incarcerated due to the presence of counsel will be more likely to secure employment and begin to pay their court fines and costs, which will make it more likely in the long run that the government

will receive payments. *See* (R. 16a; R. 53a) (explaining that Mr. Diaz made payments towards his fines and costs while he was employed).¹¹

3. Mr. Diaz Did Not Waive His Right to Counsel.

The trial court apparently agreed in principle that Mr. Diaz had a right to counsel, but it then failed to carry through on its obligation to ensure that he was actually represented. At the April 6 bench warrant hearing, the trial court informed Mr. Diaz that “you have the right to an attorney, if you can’t afford one, upon request one will be provided.” (R. 33a). But the court immediately turned to other business in the case without any further discussion with Mr. Diaz about whether he wanted counsel or how to obtain it. When he returned on April 24, having spent the past three weeks in jail, Mr. Diaz remained unrepresented, and the trial court did not comment on or ask Mr. Diaz about his lack of representation. (R. 38a). At no time did the court obtain a knowing, voluntary, and intelligent waiver of that right, which requires an on-the-record colloquy.

By not inquiring into whether Mr. Diaz intended to waive his right to counsel, the trial court violated Pa.R.Crim.P. 121(2). Rule 121 requires that, prior to accepting any waiver of counsel, the court “at a minimum, shall elicit the following information from the defendant:

¹¹ For those same reasons, because “the interests of justice require it,” the trial court should have at least used its discretion to appoint counsel for Mr. Diaz. Pa.R.Crim.P. 122(A)(3).

- (a) that the defendant understands that he or she has the right to be represented by counsel, and the right to have free counsel appointed if the defendant is indigent;
- (b) that the defendant understands the nature of the charges against the defendant and the elements of each of those charges;
- (c) that the defendant is aware of the permissible range of sentences and/or fines for the offenses charged;
- (d) that the defendant understands that if he or she waives the right to counsel, the defendant will still be bound by all the normal rules of procedure and that counsel would be familiar with these rules;
- (e) that the defendant understands that there are possible defenses to these charges that counsel might be aware of, and if these defenses are not raised at trial, they may be lost permanently; and
- (f) that the defendant understands that, in addition to defenses, the defendant has many rights that, if not timely asserted, may be lost permanently; and that if errors occur and are not timely objected to, or otherwise timely raised by the defendant, these errors may be lost permanently.”

The trial court, however, failed to elicit *any* of this information from Mr. Diaz, which foreclosed any possibility that Mr. Diaz waived his right to counsel. *See Commonwealth v. Houtz*, 856 A.2d 119, 124 (Pa. Super. Ct. 2004) (defendant’s prior experience with judicial system is irrelevant to whether there is a waiver, and failure “to conduct a thorough on-the-record colloquy before allowing a defendant to proceed to trial pro se constitutes reversible error”); *Commonwealth v. Phillips*, 93 A.3d 847, 855 (Pa. Super. Ct. 2014) (courts’ “failure to meet the minimum requirements of Rule 121” required vacating sentence). Without obtaining such a waiver, and without actually appointing counsel for Mr. Diaz, the trial court violated his right to counsel. As a result, the proceedings violated Mr. Diaz’s right to due process and the resulting orders against him should be vacated.

C. The Court of Common Pleas Abused Its Discretion By Holding Mr. Diaz in Contempt When the Evidence Showed That He Was Destitute and Lacked the Ability to Pay.

The evidence before the trial court showed that Mr. Diaz's sole source of income was selling his blood plasma, and he had remained incarcerated because he was unable to post \$200 bail. (R. 35a; R. 71a). Had the court inquired, it would have learned that Mr. Diaz has struggled with homelessness and received food stamps. (R. 55a). As a result, it was evident that Mr. Diaz was indigent and unable to pay, and it was manifestly unreasonable for the trial court to conclude otherwise.

Pennsylvania's appellate courts have explained that receiving public assistance (*e.g.*, food stamps or Medicaid) and the services of the public defender's office "invite the presumption of indigence." *Eggers*, 742 A.2d at 176 n.1. That presumption should have guided the trial court, and cases such as *Ruiz*, 470 A.2d at 1011-12 and *Commonwealth v. Gaskin*, 472 A.2d 1154, 1157-58 (Pa. Super. Ct. 1984) indicate that courts need to look at a defendant's entire financial picture when determining ability to pay. The court abused its discretion by ignoring this well-established precedent.

Moreover, this Court has instructed trial courts to look to the "established processes for assessing indigency" through the *in forma pauperis* ("IFP") standards when assessing a defendant's financial status in criminal cases. *Commonwealth v. Cannon*, 954 A.2d 1222, 1226 (Pa. Super. Ct. 2008) (using the IFP standards and

the appointment of counsel standards to determine whether to waive the cost of an expert in a criminal case, although the defendant failed to provide evidence of indigency). *See also Commonwealth v. Konias*, 136 A.3d 1014, 1020 (Pa. Super. Ct. 2016) (same); *Commonwealth v. Mead*, 446 A.2d 971, 974 (Pa. Super. Ct. 1982) (reviewing IFP application and petition for appointment of counsel to help determine financial status when setting a fine). This is because of the “dearth of case law” in criminal cases, compared with the “well-established principles governing indigency in civil cases.” *Commonwealth v. Lepre*, 18 A.3d 1225, 1226-27 (Pa. Super. Ct. 2011) (applying IFP standards to waive appeal costs). These same principles govern whether or what a defendant is able to pay under Rule 706, as indigence is indigence whether in a criminal or civil context.¹² The trial court misapplied the law by not heeding this Court’s precedents that look to the analogous IFP principles when adjudicating financial matters in criminal cases. Although this Court has not yet explicitly ruled on this with respect to fines and costs, there is simply no need to re-invent the wheel when the analogous IFP cases can easily provide that much-needed guidance.

¹² This Court uses “in poverty” and “indigent” interchangeably, and there is no legal distinction between the two terms. *See, e.g., Commonwealth v. Hernandez*, 917 A.2d 332 (Pa. Super. Ct. 2007); *Crosby Square Apartments v. Henson*, 666 A.2d 737 (Pa. Super. Ct. 1995); *Commonwealth v. Regan*, 359 A.2d 403 (Pa. Super. Ct. 1976). Accordingly, cases that set forth standards for determining whether an individual is in poverty are equally applicable to the inquiry under Rule 706 of whether a defendant is indigent.

When determining indigence in IFP petitions, the question is “not whether petitioners are unable to pay the costs but whether they are in poverty. If they are in poverty, it follows that they are unable to pay the costs, and their petition should be granted.” *Gerlitzki v. Feldser*, 307 A.2d 307, 308 (Pa. Super. Ct. 1973) (en banc). Inability to pay costs must be “read not with an accountant’s but a housewife’s eyes,” as poverty is not a question of net worth but instead “whether he is able to obtain the necessities of life.” *Id.* A petitioner with “no income except public assistance benefits” and “minimal” net worth is in poverty and thus eligible to proceed IFP. *Id.* Where the defendant has some income and/or assets, the courts’ review of those resources is specific and grounded in practicality. Thus, in *Gerlitzki*, the petitioner owned assets including a station wagon and a truck, and he had a small positive net worth. *Id.* He could have paid court costs, perhaps by selling a car—but as a matter of law, he was indigent and thus *unable* to pay. *Id.* See also *Koziatek v. Marquett*, 484 A.2d 806, 808 (Pa. Super. Ct. 1984) (plaintiff established “prima facie case of impoverishment” when the “sole source of support was a monthly disability payment”).

This approach has been adopted by the Pennsylvania Supreme Court, which views poverty as “not . . . a mere mathematical exercise” of income versus expenses but instead an analysis of “all the facts and circumstances of the situation, both financial and personal, [which] must be taken into the account.” *Stein*

Enterprises, Inc. v. Golla, 426 A.2d 1129, 1132 (Pa. 1981). Accordingly, “if the individual can afford to pay court costs only by sacrificing some of the items and services which are necessary for his day-to-day existence, he may not be forced to prepay costs in order to gain access to the courts, despite the fact that he may have some ‘excess’ income or unencumbered assets.” *Id.* In that case, although the trial court did not view the petitioner’s automobile as a necessity, the Court found that he needed the car for “legitimate, necessary purposes” and was not required to sell it to pay his court costs. *Id.* at 1133.¹³ See also *Amrhein v. Amrhein*, 903 A.2d 17, 22 (Pa. Super. Ct. 2006) (a “focus on only gross income ignores the unassailable expenses of life” including “rent, utilities, [and] the costs of health insurance”).

The principles from these cases highlight the trial courts’ existing obligations to determine fines and costs: they must look at a defendant’s entire financial picture of income and expenses, such as through an ability-to-pay form that—like the civil IFP petition found in Pa.R.C.P. 240—requires a defendant provide clear financial information for the court to consider. This body of IFP cases, however, has the advantage of having been substantially litigated, with multiple reported opinions from this Court that actually provide dollar figures,

¹³ The underlying statute in *Stein Enterprises* and *Gerlitzki* allowed petitioners to proceed IFP if they “by reason of poverty [are] unable to pay the costs of the suit.” *Gerlitzki*, 307 A.2d at 308 (alteration in original). This is practically identical to the “unable to pay the fine” standard in *Cliff*, suggesting that there is no principled distinction between the two lines of authority. *Cliff*, 304 A.2d at 161.

making it easy for trial courts to import those standards and have a common point of reference. Following this Court’s instructions in other criminal cases, the trial court should have applied these standards when determining whether Mr. Diaz was able to pay. But it failed to do so, and thus abused its discretion by unlawfully holding Mr. Diaz in contempt and incarcerated him.

D. The Court of Common Pleas Abused Its Discretion By Imposing A Purge Condition Mr. Diaz Could Not Meet.

When it sentenced Mr. Diaz to jail unless he immediately paid \$250, the trial court further abused its discretion by setting a “purge” amount that, on the record before the court, was manifestly unreasonable. (R. 39a). Our Supreme Court has explained that, when a court imposes a civil contempt purge condition, it must find “[b]eyond a reasonable doubt, from the totality of the evidence before it,” that the defendant was capable of paying the purge amount at the time that he was found in contempt. *Barrett*, 368 A.2d at 620-21. This separate inquiry and higher evidentiary standard is required because the foundation of a civil contempt order is the principle that the defendant holds the key to his own release: if he cannot, in fact, effect his own release through compliance with the purge condition, then the sentence is the same as a criminal sentence, but without the “safeguards of criminal procedure.” *Id.* at 621. That violates the law. *See Durant v. Durant*, 489 A.2d 266, 268 (Pa. Super. Ct. 1985) (“There must be sufficient evidence from which the trial court may find beyond a reasonable doubt that appellant has the present ability to

purge himself of the contempt citation. After a thorough review of the entire record, however, we find nothing further to indicate that appellant has access to the sum of \$4,766.00 or may readily obtain that amount.”).

None of the evidence before the trial court at the April 24 hearing supported a finding that Mr. Diaz had any present ability to pay the \$250 purge set by the court. Indeed, all of the evidence available to the court suggested the opposite. Mr. Diaz had not paid the \$200 bail set just three weeks before, and had told the court that he hoped to be able to make future payments by selling his blood plasma and working in Reading. (R. 35a; R. 71a). There was no evidence before the trial court to support a finding “[b]eyond a reasonable doubt, from the totality of the evidence” that Mr. Diaz was capable of paying \$250 (more than the bail he did not post) at the time that he was found in contempt. *Barrett*, 368 A.2d at 620-21 (“[T]he crucial question is not whether he willfully and contemptuously violated the original orders, but whether he had the present ability to comply with the conditions set by the court for purging himself of his contempt.”).

At the April 24 hearing, the trial court noted that it did not object to Mr. Diaz participating in work release while incarcerated, which may indicate that the court intended him to meet his purge condition through work while imprisoned. (R. 39a). This Court addressed a substantially similar situation in *Hyle v. Hyle*, 868 A.2d 601, 605-06 (Pa. Super. Ct. 2005), where the Court invalidated the trial

court's purge condition that the contemnor earn money through work release to pay his purge amount. The *Hyle* Court emphasized that the relevant legal question is whether the trial court condition is set "in such a way as the contemnor has the **present ability** to comply with the order." *Id.* at 605 (emphasis in original). Here, as in *Hyle*, Mr. Diaz lacked the ability to pay his purge condition at the time he was held in contempt, meaning that the trial court imposed an unlawful purge condition—and therefore imposed a criminal contempt sentence—without the "procedural rights and safeguards afforded to criminal defendants." *Id.* at 606. This both misapplied the law and—to the extent that the trial court believed Mr. Diaz was capable of meeting the purge condition—was a manifestly unreasonable conclusion.

E. The Court of Common Pleas Abused Its Discretion By Placing Mr. Diaz on An Unreasonable Payment Plan in Light of His Financial Circumstances.

At the conclusion of the hearing, after Mr. Diaz had spent three weeks in jail on \$200 bail and had been held in contempt with a purge amount of \$250, the trial court imposed a payment plan of \$100 per month. (R. 10-11a; R. 35a; R. 39a). In so doing, the trial court abused its discretion, as such a payment plan was manifestly unreasonable in light of the evidence before the court.

When a court sets a payment plan, it must take "into account the financial resources of the defendant and the nature of the burden its payments will impose."

Pa.R.Crim.P. 706(B). When, as here, the court is considering modifying an existing payment plan, its actions must be “just and practicable under the circumstances of record,” and the defendant has the burden to show that he is “without the means to meet the payment schedule.” *Id.* at 706(D). All of this is also subject to the Supreme Court’s admonishment that payment plans must be “reasonable.” *Cliff*, 304 A.2d at 161.

The trial court’s failure to inquire into Mr. Diaz’s financial status provided it with insufficient evidence to craft a reasonable payment plan that took into account the burden it would place upon Mr. Diaz. As noted, the limited evidence on the record at the time demonstrated that he was in dire financial straits and not in a position to afford a \$100 per month payment plan. Indeed, in such circumstances and in accordance with this Court’s precedents, the appropriate course of action would instead be to suspend Mr. Diaz’s payments temporarily until he had an opportunity to get back on his feet. As this Court has explained, Rule 706 enforces the constitutional requirement that there is a “duty of paying costs ‘only against those who actually become able to meet it without hardship.’” *Commonwealth v. Hernandez*, 917 A.2d 332, 337 (Pa. Super. Ct. 2007) (quoting *Fuller v. Oregon*, 417 U.S. 40, 54 (1974)). In *Hernandez*, this Court cited with approval *Alexander v. Johnson*, 742 F.2d 117, 124 (4th Cir. 1984), which held that a court must consider “the other demands on [the defendant’s] own and family’s finances, and the

hardships he or his family will endure if repayment is required. The purpose of this inquiry is to assure repayment is not required as long as he remains indigent.”

The facts in the record all show that Mr. Diaz is indigent. He spent three weeks in jail because he could not come up with \$200 for bail, and he spent another week in jail after the Fines and Costs Contempt hearing because he could not come up with \$250. (R. 10-11a; R. 35a). Prior to his incarceration, he was unemployed and selling his blood plasma. (R. 71a). Had the court inquired into his financial status, it would have learned that he had no income or other means aside from selling his blood plasma, had been receiving public benefits, had recently been homeless, and was entirely dependent on financial support from a friend and the friend’s mother because he was unemployed and has been unable to maintain a job. (R. 55a).

As noted above, had the trial court properly applied the IFP standards established by this Court and our Supreme Court to determine indigence, it would have found that Mr. Diaz was at least temporarily unable to afford to pay any fines and costs. By not heeding this Court’s guidance in *Cannon* that trial courts should use the “established processes for assessing indigency” found in the IFP line of cases, the trial court further abused its discretion by misapplying the law. *Cannon*, 954 A.2d at 1226. Under those cases, Pennsylvania’s appellate courts have repeatedly found that indigent individuals who make far more than Mr. Diaz are, as

a matter of law, unable to pay any amount of money. *See, e.g., Stein Enterprises, Inc.*, 426 A.2d at 1132 (granting IFP status for petitioner making \$273 per month (\$13,652 annually today)); *Crosby Square Apartments v. Henson*, 666 A.2d 737, 738 (Pa. Super. Ct. 1995) (granting IFP status for petitioner with monthly income of \$1,425 (\$27,737 annually today) for a family of five).¹⁴ By not applying these principles to determine that Mr. Diaz’s inconsistent income from selling blood plasma was too low to support placing him on any payment plan, let alone \$100 per month, the trial court abused its discretion.

REQUEST FOR PUBLICATION

Pursuant to Pa.R.A.P. 3519(a), Mr. Diaz respectfully requests that this Court publish its disposition in this matter because of the substantial public importance of the issues raised in this appeal. Mr. Diaz’s case is typical of the modern debtors’ prison cases that, at the request of the Supreme Court, were recently the subject of a report by the Pennsylvania Interbranch Commission on Gender, Racial and Ethnic Fairness in its report “Ending Debtors’ Prisons in Pennsylvania: Current Issues in Bail and Legal Financial Obligations: A Practical Guide for Reform.” Thousands of Pennsylvanians are jailed each year because they are indigent and unable to pay their fines, costs, and restitution. *See* Pa. Interbranch Comm’n on

¹⁴ All of these figures were updated for inflation as of March 2017 using the U.S. Department of Labor Bureau of Labor Statistic’s Consumer Price Index inflation calculation tool available at <https://data.bls.gov/cgi-bin/cpicalc.pl>.

Gender, Racial and Ethnic Fairness, “Ending Debtors’ Prisons in Pennsylvania: Current Issues in Bail and Legal Financial Obligations: A Practical Guide for Reform” (July 10, 2017), http://www.pa-interbranchcommission.com/_pdfs/Ending-Debtors-Prisons-in-PA-Report.pdf.

In addition, Mr. Diaz’s appeal is (but for one issue) identical to the appeal of Brian Smetana in Superior Court Docket No. 894 MDA 2017. Both hearings occurred as part of the same series of Fines and Costs Contempt day hearings, which occur monthly in Lebanon County. As the transcripts in these cases show, Mr. Diaz’s was the 29th case that day, while Mr. Smetana’s was the 116th. (R. 38a). These cases were not outliers within the Lebanon County Court of Common Pleas or in the state as a whole. Two other appeals, those of Gregory Mauk in 461 WDA 2017 and William Ettison in 1063 WDA 2017, are currently pending before this Court and raise similar issues arising from fines and costs proceedings in other courts of common pleas. It is clear from these cases and the Interbranch Commission’s report that our trial courts need guidance on how to appropriately exercise their contempt powers when a defendant defaults on payments, as well as how to set appropriate payment plans. The Court’s decision in this matter is desperately needed to provide that guidance.¹⁵

¹⁵ In the event that the Commonwealth chooses to not participate in this matter, this Court should still issue a full opinion and not simply vacate and remand. In the

CONCLUSION

For the foregoing reasons, the Court should hold that the trial court exceeded its authority by holding Appellant William Diaz in civil contempt without inquiring into his ability to pay, by imposing a purge condition he was unable to afford, and by putting him on an unreasonable payment plan with which he will be unable to comply. Accordingly, this Court should vacate the trial court's April 24 order, clarify the standards that the trial court must follow, and remand for new proceedings. The Court should take the opportunity to remind Pennsylvania's courts that, "in Pennsylvania, we do not imprison the poor solely for their inability to pay fines." *Eggers*, 742 A.2d at 176.

Respectfully submitted,

/s/ Andrew Christy

Andrew Christy

PA ID No. 322053

Mary Catherine Roper

Pa. I.D. No. 71107

Supreme Court's seminal case on these issues, which arose out of a group of petitions for writs of habeas corpus, neither the warden nor the District Attorney defended the court's actions or participated in the proceedings. *Cliff*, 304 A.2d at 159 n.2. Nevertheless, "because of the immediate public importance of the legal principles herein," the Court not only heard the case and issued an opinion, it also bypassed the normal appeals process and took a direct appeal from the court of common pleas. *Id.* at n.1 This Court should similarly recognize the grave importance of the issues raised herein and issue an opinion instructing trial courts on how to act with respect to fines and costs.

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Date: October 19, 2017

Counsel for Appellant

CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to Pa.R.A.P. 2135, that this brief does not exceed 14,000 words.

/s/ Andrew Christy

Date: October 19, 2017

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the parties at the addresses and in the manner listed below:

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/s/ Andrew Christy

Date: October 19, 2017

Appendix A

COF 7

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IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY,
PENNSYLVANIA

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :

V. :

: CP-38-CR-1838-2012

: CP-38-CR-1175-2013

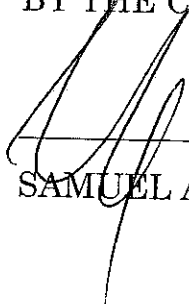
WILLIAM PEREZ DIAZ :

x Amended*
ORDER

AND NOW, *August 1st*, 2017, upon consideration of Appellant's Concise Statement of Errors Complained of on Appeal, we hereby affirm our Order dated April 24, 2017.

Pursuant to Pa.R.A.P. 1931, the Clerk of Courts of the Court of Common Pleas of Lebanon County is hereby directed to transmit this case's record, including this Order ~~and attached Opinion~~, to the Superior Court of Pennsylvania immediately.

BY THE COURT:

 J.
SAMUEL A. KLINE

cc: District Attorney's Office
Andrew Christy, Esq.
Jennifer Traxler, Esq., Deputy Prothonotary of the Superior

Appendix B

**IN THE COURT OF COMMON PLEAS
FOR LEBANON COUNTY**

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA)	
)	
v.)	Case Nos. CP-38-CR-1838-2012
)	OTN: L7496764
WILLIAM DIAZ)	CP-38-CR-1175-2013
)	OTN: L7944241
)	
<hr/>		

CONCISE STATEMENT OF ERRORS COMPLAINED OF ON APPEAL

Defendant William Diaz, through counsel, hereby files this Concise Statement of Errors Complained of on Appeal in accordance with Pa.R.A.P. 1925(b) and the Order of this Court dated May 24, 2017.

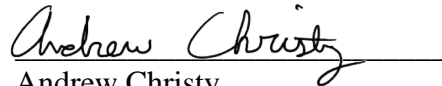
On appeal, Mr. Diaz intends to raise the following issues:

1. In violation of Pa.R.Crim.P. 706 and *Bearden v. Georgia*, 461 U.S. 660 (1983), the Court erred by holding Mr. Diaz in civil contempt for failure to pay his court fines and costs and incarcerating him without finding that his failure to make those payments was willful and not a result of his inability to pay.
2. In violation of *Barrett v. Barrett*, 368 A.2d 616 (Pa. 1977), the Court erred by setting a dollar amount by which Mr. Diaz could purge his contempt and be released from incarceration without finding beyond a reasonable doubt that Mr. Diaz had the present ability to comply with the Court's order and meet that purge condition, thereby unlawfully converting the civil contempt sentence into one of criminal contempt.
3. In violation of Pa.R.Crim.P. 122 and *Commonwealth v. Farmer*, 466 A.2d 677 (Pa. Super. Ct. 1983), the Court erred by incarcerating Mr. Diaz for civil contempt without notifying him of his right to counsel and without either providing him with counsel or

obtaining a knowing, intelligent, and voluntary waiver of that right.

4. In violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution and *Turner v. Rogers*, 564 U.S. 431 (2011), the Court erred by incarcerating Mr. Diaz for civil contempt without notifying him of his right to counsel and without either providing him with counsel or obtaining a knowing, intelligent, and voluntary waiver of that right.
5. In violation of Pa.R.Crim.P. 706 and *Com. ex. Rel. Parrish v. Cliff*, 304 A.2d 158 (Pa. 1973), the Court erred by placing Mr. Diaz on a payment plan without inquiring into his financial circumstances and determining whether such a plan was reasonable in light of such circumstances.

Respectfully submitted,



Andrew Christy

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Date: June 8, 2017

CERTIFICATE OF SERVICE

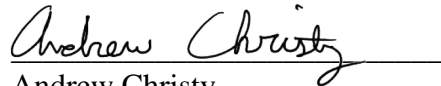
I hereby certify that the foregoing document was served upon the parties at the addresses and in the manner listed below:

Via FedEx:

Lebanon County Office of the District Attorney
Municipal Building, Room # 11
400 South 8th Street
Lebanon, PA. 17042-6794

David R. Warner, Jr.
Lebanon County Solicitor
Buzgon Davis Law Offices
525 S 8th St
Lebanon, PA 17042

Hon. Samuel A. Kline
Lebanon County Court of Common Pleas
Room 302, Main Chambers Municipal Building
400 South 8th Street
Lebanon, PA 17042


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achristy@aclupa.org

Date: June 8, 2017

**IN THE SUPERIOR COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

No. 893 MDA 2017

COMMONWEALTH OF PENNSYLVANIA,

Appellee,

v.

WILLIAM DIAZ,

Appellant.

APPELLANT’S REPRODUCED RECORD

Appeal from Order of the Court of Common Pleas
of Lebanon County, Pennsylvania dated April 24, 2017

Andrew Christy
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TABLE OF CONTENTS

1. Docket Entries	R. 01a-31a
2. April 6, 2017 Hearing Transcript	R. 32a-36a
3. April 24, 2017 Hearing Transcript	R. 37a-40a
4. April 24, 2017 Order.....	R. 41a
5. May 2, 2017 Petition for a Writ of Habeas Corpus	R. 42a-R. 68a
6. May 22, 2017 Notice of Appeal	R. 69a-R. 70a
7. August 18, 2017 Order Granting Motion to Amend the Record.....	R.71a
8. Trial Court Opinion	Reproduced as Appendix A to Appellant's Brief

COURT OF COMMON PLEAS OF LEBANON COUNTY

SECURE DOCKET

Docket Number: CP-38-CR-0001838-2012

CRIMINAL DOCKET

Court Case



Commonwealth of Pennsylvania

v.

William Perez Diaz

Lebanon CO Public Defender
Municipal Bldg RM 122
Lebanon, PA 17042

Representing: Diaz, William Perez

Page 7 of 28

Name: Kevin Matthew Bovard
Co-Counsel

Supreme Court No: 310818

Rep. Status: Active

Phone Number(s):
415-420-2168 (Phone)

Address:
Baker Hosteller Llp
2929 Arch St Fl 12
Philadelphia, PA 19104-2891

Representing: Diaz, William Perez

ENTRIES

Sequence Number	CP Filed Date	Document Date	Filed By
1 ①	12/05/2012		Wolfe, Kim R.
Bail Set - Diaz, William Perez			
1 ②	12/27/2012		Lebanon County Court Administration
Notice: Three Date Letter			
2	12/27/2012		Wolfe, Kim R.
Order Granting Motion for Modification of Bail - Diaz, William Perez			
1 ③	12/31/2012		MDJ-52-3-03
Original Papers Received from Lower Court			
1 ④	01/02/2013		Adams, Kimberly Anne
Entry of Appearance Application fo PD Approved			
1 N/A	01/03/2013		Court of Common Pleas - Lebanon County
Arraignment Scheduled 1/30/2013 8:30AM			

COURT OF COMMON PLEAS OF LEBANON COUNTY

SECURE DOCKET

Docket Number: CP-38-CR-0001838-2012

CRIMINAL DOCKET

Court Case



Commonwealth of Pennsylvania

v.

William Perez Diaz

Page 8 of 28

ENTRIES

Sequence Number	CP Filed Date	Document Date	Filed By
2 NIA	01/03/2013		Court of Common Pleas - Lebanon County
Call of the List Scheduled 3/21/2013 8:30AM			
3 NIA	01/03/2013		Court of Common Pleas - Lebanon County
Crim Jury Trial Scheduled 4/1/2013 8:30AM			
1 (5)	01/15/2013		Commonwealth of Pennsylvania
Information Filed			
1 (6)	01/30/2013		Diaz, William Perez
Waiver of Appearance at Arraignment			
1 NIA	01/31/2013		Lebanon County Court Administration
Arraignment Cancelled			
1 (7)	02/01/2013		Lebanon County Victim/Witness
Application for Restitution			
1	03/15/2013		Tylwalk, John C.
Bail Set - Diaz, William Perez			
2 (8)	03/15/2013		Vazquez, Evelyn
Bail Posted - Diaz, William Perez			
1	03/21/2013		Jones, Charles T. Jr.
Guilty Plea - Negotiated			
2 (9)	03/21/2013		Jones, Charles T. Jr.
Disposition Filed			
3	03/21/2013		Diaz, William Perez
Guilty Plea Colloquy			
4 (10)	03/21/2013		Lebanon County District Attorney's Office
Sentencing Hearing Notice			

COURT OF COMMON PLEAS OF LEBANON COUNTY

SECURE DOCKET

Docket Number: CP-38-CR-0001838-2012

CRIMINAL DOCKET

Court Case



Commonwealth of Pennsylvania

v.

William Perez Diaz

Page 9 of 28

ENTRIES

Sequence Number	CP Filed Date	Document Date	Filed By
1 <i>MLA</i>	03/22/2013		Lebanon County Court Administration
Crim Jury Trial Cancelled			
2 <i>MLA</i>	03/22/2013		Court of Common Pleas - Lebanon County
Sentencing Scheduled 5/15/2013 8:30AM			
1 <i>MLA</i>	04/15/2013		Lebanon County Court Administration
Sentencing Scheduled 05/15/2013 8:30AM			
1 (11)	05/15/2013	05/15/2013	Tylwalk, John C.
Bench Warrant Issued fta Sentencing - 05/15/2013 NO BAIL			
Lebanon County Adult Probation Unit		Arnold, Lisa M.	
05/15/2013 Interoffice			
Lebanon County Court Administration		Arnold, Lisa M.	
05/15/2013 Interoffice			
Lebanon County District Attorney's Office		Arnold, Lisa M.	
05/15/2013 Interoffice			
Lebanon County Sheriff's Department		Arnold, Lisa M.	
05/15/2013 Hand Delivered			
Lebanon County Prison		Arnold, Lisa M.	
05/16/2013 Fax			
Lebanon County Solicitor		Arnold, Lisa M.	
05/16/2013 Fax			
1 <i>MLA</i>	05/17/2013		Lebanon County Court Administration
Sentencing Scheduled 05/29/2013 8:30AM			
2 (12)	05/17/2013		Unknown Filer
Bench Warrant - Failure to Appear (Returned Served - Adjudicated)			
3 (13)	05/17/2013	05/17/2013	Kline, Samuel A.
Bench Warrant - Failure to Appear (Vacated - Adjudicated)			
Diaz, William Perez		Arnold, Lisa M.	
05/17/2013 Hand Delivered-Open Court			
Lebanon County Adult Probation Unit		Lebanon County Court Administration	
05/17/2013 Interoffice			

GPCMS 9082

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003

COURT OF COMMON PLEAS OF LEBANON COUNTY

SECURE DOCKET

Docket Number: CP-38-CR-0001838-2012

CRIMINAL DOCKET

Court Case



Commonwealth of Pennsylvania

v.

William Perez Diaz

Page 10 of 28

ENTRIES

Sequence Number	CP Filed Date	Document Date	Filed By
<u>Service To</u>		<u>Service By</u>	
<u>Issue Date</u>	<u>Service Type</u>	<u>Status Date</u>	<u>Service Status</u>
Lebanon County Correctional Facility		Arnold, Lisa M.	
05/17/2013	Hand Delivered-Open Court		
Lebanon County Court Administration		Arnold, Lisa M.	
05/17/2013	Hand Delivered		
Lebanon County District Attorney's Office		Lebanon County Court Administration	
05/17/2013	Interoffice		
Lebanon County Solicitor		Lebanon County Court Administration	
05/17/2013	Fax		
<hr/>			
4	05/17/2013	05/17/2013	Kline, Samuel A.
Amended Bench Warrant - Failure to Appear (Vacated - Adjudicated)			
Diaz, William Perez			
05/17/2013	First Class		
Lebanon County Adult Probation Unit		Arnold, Lisa M.	
05/17/2013	Interoffice		
Lebanon County Correctional Facility		Arnold, Lisa M.	
05/17/2013	Interoffice		
Lebanon County Court Administration		Arnold, Lisa M.	
05/17/2013	Interoffice		
Lebanon County District Attorney's Office		Arnold, Lisa M.	
05/17/2013	Interoffice		
<hr/>			
5	05/17/2013		Kline, Samuel A.
Complete Bail Forfeiture - Diaz, William Perez			
<hr/>			
6	05/17/2013		Kline, Samuel A.
Bail Set - Diaz, William Perez			
<hr/>			
7	05/17/2013		Diaz, William Perez
Bail Posted - Diaz, William Perez			
<hr/>			
1	05/31/2013	05/29/2013	Tylwalk, John C.
Bench Warrant Issued			
fta Sentencing 05/29/2013 - ANY BAIL PREVIOUSLY POSTED IS FORFEITED - NO BAIL			
Judd, Elizabeth		Arnold, Lisa M.	

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Printed: 08/08/2017

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004

COURT OF COMMON PLEAS OF LEBANON COUNTY

SECURE DOCKET

Docket Number: CP-38-CR-0001838-2012

CRIMINAL DOCKET

Court Case



Commonwealth of Pennsylvania

v.

William Perez Diaz

Page 11 of 28

ENTRIES

Sequence Number	CP Filed Date	Document Date	Filed By
<u>Service To</u>		<u>Service By</u>	
<u>Issue Date</u>	<u>Service Type</u>	<u>Status Date</u>	<u>Service Status</u>
05/31/2013	Interoffice		
Lebanon County Adult Probation Unit		Arnold, Lisa M.	
05/31/2013	Interoffice		
Lebanon County Correctional Facility		Arnold, Lisa M.	
05/31/2013	Interoffice		
Lebanon County Court Administration		Arnold, Lisa M.	
05/31/2013	E-Mail		
Lebanon County District Attorney's Office		Arnold, Lisa M.	
05/31/2013	Interoffice		
Lebanon County Sheriff's Department		Arnold, Lisa M.	
05/31/2013	Hand Delivered		
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1	06/05/2013		Miller, Deborah A.
Bench Warrant - Failure to Appear (Returned Served - Adjudicated)			
<hr/>			
2	06/05/2013		Lebanon County Court Administration
Sentencing Scheduled 06/12/2013 8:30AM			
<hr/>			
3	06/05/2013	06/05/2013	Kline, Samuel A.
Bench Warrant - Failure to Appear (Vacated - Adjudicated)			
Diaz, William Perez		Arnold, Lisa M.	
06/05/2013	Hand Delivered-Open Court		
Lebanon County Adult Probation Unit		Lebanon County Court Administration	
06/05/2013	Interoffice		
Lebanon County Correctional Facility		Arnold, Lisa M.	
06/05/2013	Hand Delivered-Open Court		
Lebanon County Court Administration		Arnold, Lisa M.	
06/05/2013	Hand Delivered		
Lebanon County District Attorney's Office		Lebanon County Court Administration	
06/05/2013	Interoffice		
Lebanon County Solicitor		Lebanon County Court Administration	
06/05/2013	Fax		

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COURT OF COMMON PLEAS OF LEBANON COUNTY

SECURE DOCKET

Docket Number: CP-38-CR-0001838-2012

CRIMINAL DOCKET

Court Case



Commonwealth of Pennsylvania

v.

William Perez Diaz

Page 12 of 28

ENTRIES

Sequence Number	CP Filed Date	Document Date	Filed By
4	06/05/2013		Kline, Samuel A.
Bail Set - Diaz, William Perez			
5 (19)	06/05/2013		Diaz, William Perez
Bail Posted - Diaz, William Perez			
1 (20)	06/14/2013	06/12/2013	Tylwalk, John C.
Bench Warrant Issued			
fta - Sentencing - 06/12/2013 ANY BAIL PREVIOUSLY POSTED IS FORFEITED - NO BAIL - THE COURT SPECIFICALLY DIRECTS THAT IF DEFENDANT IS PICKED UP SHALL REMAIN INCARCERATED UNTIL SENTENCING OCCURS			
Service: DA, info; Pub Def, info; David Warner, mailed; Sheriff, handdelivered			
1 MIA	06/24/2013		Lebanon County Court Administration
Sentencing Scheduled 07/03/2013 8:30AM			
2 (21)	06/24/2013		Stephens, Barry
Bench Warrant - Failure to Appear (Returned Served - Adjudicated)			
3 (22)	06/24/2013	06/24/2013	Kline, Samuel A.
Bench Warrant - Failure to Appear (Vacated - Adjudicated)			
cc: open court: defendant; prison; crt admin; inter ofc: district atty; probation; co. solicitor - faxed by crt admin			
1 (23)	07/03/2013		Diaz, William Perez
Written Post-Sentence Colloquy			
2 MIA	07/03/2013		Tylwalk, John C.
Order - Sentence/Penalty Imposed			
Pay restitution to Boscov's \$23.98			
1 (24)	07/09/2013	07/03/2013	Tylwalk, John C.
Sentence/Penalty Order Filed			
CDU Adult Probation		Arnold, Lisa M.	
07/09/2013	Interoffice		
Lebanon County Adult Probation Unit		Arnold, Lisa M.	
07/09/2013	Interoffice		
Lebanon County Correctional Facility		Arnold, Lisa M.	
07/09/2013	Interoffice		
Lebanon County District Attorney's Office		Arnold, Lisa M.	

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006

COURT OF COMMON PLEAS OF LEBANON COUNTY

SECURE DOCKET



Docket Number: CP-38-CR-0001838-2012

CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania

v.

William Perez Diaz

Page 13 of 28

ENTRIES

Sequence Number	CP Filed Date	Document Date	Filed By
<u>Service To</u>		<u>Service By</u>	
<u>Issue Date</u>	<u>Service Type</u>	<u>Status Date</u>	<u>Service Status</u>
07/09/2013	Interoffice		
Lebanon County Victim/Witness		Arnold, Lisa M.	
07/09/2013	Interoffice		
Sidelnick, Nicholas John		Arnold, Lisa M.	
07/09/2013	Interoffice		
1 <i>HIA</i>	07/12/2013		Court of Common Pleas - Lebanon County
Penalty Assessed			
1 <i>25</i>	07/17/2013		Lebanon County District Attorney's Office
Motion for Hearing on Violation of Probation/Parole			
1	07/18/2013		Lebanon County Court Administration
Parole Violation Scheduled 08/28/2013 1:30PM CT.1			
1	07/19/2013	07/18/2013	Tylwalk, John C.
Order Granting Motion for Hearing on Violation of Probation/Parole			
Diaz, William Perez		Arnold, Lisa M.	
07/19/2013	First Class		
Lebanon County Adult Probation Unit		Arnold, Lisa M.	
07/19/2013	Interoffice		
Lebanon County Court Administration		Arnold, Lisa M.	
07/19/2013	Interoffice		
Lebanon County District Attorney's Office		Arnold, Lisa M.	
07/19/2013	Interoffice		
1 <i>26</i>	08/28/2013	08/28/2013	Tylwalk, John C.
Bench Warrant Issued			
Service: Def, mailed; Sheriff, Handcarried; DA, Inofc; Court Admin, Inofc; Solicitor & Prison, Fax; Adult Prob, Inofc.			
1 <i>HIA</i>	09/11/2013		Court of Common Pleas - Lebanon County
Do Not Pursue Delinquency			

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007

COURT OF COMMON PLEAS OF LEBANON COUNTY

SECURE DOCKET



Docket Number: CP-38-CR-0001838-2012

CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania

v.

William Perez Diaz

Page 14 of 28

ENTRIES

Sequence Number	CP Filed Date	Document Date	Filed By
1 (A1)	10/05/2014		Heuyard, Stacie B.
Bench Warrant - Failure to Appear (Returned Served - Closed)			
1	10/13/2014		Lebanon County District Attorney's Office
Motion for Hearing on Violation of Probation/Parole			
2 (28)	10/13/2014	10/14/2014	Tylwalk, John C.
Order Scheduling Hearing-Parole Viol service: prob, DA, defend, crt adm			
1 NA	10/14/2014		Lebanon County Court Administration
Parole Violation Scheduled 10/29/2014 1:30PM CT.1			
1 (29)	10/29/2014	10/29/2014	Tylwalk, John C.
Order Granting Motion for Continuance service: DA, prob, crt adm, defend/defense attny			
2 N/A	10/29/2014		Lebanon County Court Administration
Parole Violation Continued			
3 N/A	10/29/2014		Lebanon County Court Administration
Parole Violation Scheduled 11/19/2014 1:30PM CT.1			
1 (30)	11/19/2014	11/19/2014	Tylwalk, John C.
Parole Violation Order service: prob, DA, prison, defense attny, defend			
1 N/A	12/19/2014		Court of Common Pleas - Lebanon County
Pursue Delinquency			
1 (31)	02/04/2015	02/04/2015	Tylwalk, John C.
Order Granting Parole Diaz, William Perez 02/04/2015 Interoffice Lebanon County Clerk of Courts			

CPCMS 8082

Printed: 08/08/2017

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COURT OF COMMON PLEAS OF LEBANON COUNTY

SECURE DOCKET



Docket Number: CP-38-CR-0001838-2012

CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania

v.

William Perez Diaz

Page 15 of 28

ENTRIES

Sequence Number	CP Filed Date	Document Date	Filed By
<u>Service To</u>	<u>Issue Date</u>	<u>Service By</u>	<u>Service Status</u>
Lebanon County Adult Probation Unit	02/04/2015	Lebanon County Clerk of Courts	
Lebanon County Correctional Facility	02/04/2015	Lebanon County Clerk of Courts	
Lebanon County District Attorney's Office	02/04/2015	Lebanon County Clerk of Courts	
Lebanon County Domestic Relations Office	02/04/2015	Lebanon County Clerk of Courts	
1 <i>NIA</i>	05/24/2016	Court of Common Pleas - Lebanon County	
Delinquency Notice Filed - 45 Days Overdue			
1 <i>NIA</i>	06/06/2016	Court of Common Pleas - Lebanon County	
Payment Plan Introduction Letter			
1 <i>NIA</i>	07/13/2016	Court of Common Pleas - Lebanon County	
Delinquency Notice Filed - 95 Days Overdue			
1 <i>NIA</i>	08/05/2016	Court of Common Pleas - Lebanon County	
Delinquency Notice Filed - 118 Days Overdue			
1 <i>NIA</i>	09/08/2016	Court of Common Pleas - Lebanon County	
Delinquency Notice Filed - 152 Days Overdue			
1 <i>NIA</i>	11/02/2016	Lebanon County Probation Department	
Contempt Fines and Costs Scheduled 01/30/2017 9:00AM			
2 <i>CS</i>	11/02/2016	Court of Common Pleas - Lebanon County	
Delinquency Notice - Hearing Scheduled January 30, 2017			
Diaz, William Perez		CDU Adult Probation	

CPCMS 9082

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009

COURT OF COMMON PLEAS OF LEBANON COUNTY

SECURE DOCKET

Docket Number: CP-38-CR-0001838-2012

CRIMINAL DOCKET

Court Case



Commonwealth of Pennsylvania

v.

William Perez Diaz

Page 16 of 28

ENTRIES

Sequence Number	CP Filed Date	Document Date	Filed By
<u>Service To</u>		<u>Service By</u>	
<u>Issue Date</u>	<u>Service Type</u>	<u>Status Date</u>	<u>Service Status</u>
11/02/2016	First Class		
3 N/A	11/02/2016		Court of Common Pleas - Lebanon County
Delinquency Notice Filed - 207 Days Overdue			
1 N/A	01/30/2017		Court of Common Pleas - Lebanon County
Do Not Pursue Delinquency			
1 (33)	01/31/2017	01/30/2017	Kline, Samuel A.
Bench Warrant Issued			
fta Contempt Fines and Costs - 01/30/2017 - Bail \$550. Cash Only			
Lebanon County Fines and Costs Collection		Lebanon County Clerk of Courts	
01/31/2017	Interoffice		
Lebanon County Sheriff's Department		Lebanon County Clerk of Courts	
01/31/2017	Hand Delivered		
Diaz, William Perez		Lebanon County Clerk of Courts	
02/16/2017	First Class		
1 (34)	04/05/2017		McCarty, Charles E. III
Bench Warrant - Failure to Appear (Returned Served - Closed)			
2 N/A	04/05/2017		Court of Common Pleas - Lebanon County
Pursue Delinquency			
1 N/A	04/06/2017		Lebanon County Court Administration
Contempt Fines and Costs Scheduled 04/24/2017 9:00AM			
2 (35)	04/06/2017	04/06/2017	Kline, Samuel A.
Bench Warrant - Failure to Appear (Vacated - Closed)			
Diaz, William Perez		Lebanon County Clerk of Courts	
04/06/2017	Hand Delivered-Open Court		
Lebanon County Adult Probation Unit		Lebanon County Court Administration	
04/06/2017	Interoffice		

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010

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SECURE DOCKET

Docket Number: CP-38-CR-0001838-2012

CRIMINAL DOCKET

Court Case



Commonwealth of Pennsylvania

v.

William Perez Diaz

Page 17 of 28

ENTRIES

Sequence Number	CP Filed Date	Document Date	Filed By
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<u>Issue Date</u>	<u>Service Type</u>	<u>Status Date</u>	<u>Service Status</u>
Lebanon County Correctional Facility	Lebanon County Clerk of Courts		
04/06/2017	Hand Delivered-Open Court		
Lebanon County Court Administration	Lebanon County Clerk of Courts		
04/06/2017	Hand Delivered		
Lebanon County District Attorney's Office	Lebanon County Court Administration		
04/06/2017	Interoffice		
Lebanon County Solicitor	Lebanon County Court Administration		
04/06/2017	Fax		
<hr/>			
3	04/06/2017		Kline, Samuel A.
Bail Set - Diaz, William Perez			
<hr/>			
1	04/24/2017		Court of Common Pleas - Lebanon County
Do Not Pursue Delinquency			
<hr/>			
1	04/25/2017	04/24/2017	Kline, Samuel A.
Contempt Order of Court- Remand to LCCF for 1 Month			
Diaz, William Perez	Lebanon County Clerk of Courts		
04/25/2017	First Class		
Lebanon County Correctional Facility	Lebanon County Clerk of Courts		
04/25/2017	Interoffice		
Lebanon County Fines and Costs Collection	Lebanon County Clerk of Courts		
04/25/2017	Interoffice		
Lebanon County Sheriff's Department	Lebanon County Clerk of Courts		
04/25/2017	Interoffice		
<hr/>			
2	04/25/2017		Christy, Andrew Chapman
Transcript Request			
To Ct Reporter for 4/24/17 proceedings			
<hr/>			
1	05/02/2017		Christy, Andrew Chapman
Entry of Appearance			

COURT OF COMMON PLEAS OF LEBANON COUNTY

SECURE DOCKET

Docket Number: CP-38-CR-0001838-2012

CRIMINAL DOCKET

Court Case



Commonwealth of Pennsylvania

v.

William Perez Diaz

Page 18 of 28

ENTRIES

Sequence Number	CP Filed Date	Document Date	Filed By
2 (39)	05/02/2017		Bovard, Kevin Matthew
Entry of Appearance			
3	05/02/2017		Christy, Andrew Chapman
Petition for Writ of Habeas Corpus			
4 (40)	05/02/2017		Court of Common Pleas - Lebanon County
Order Unsigned			
Christy, Andrew Chapman		Lebanon County Clerk of Courts	
05/04/2017		First Class	
Lebanon County District Attorney's Office		Lebanon County Clerk of Courts	
05/04/2017		Interoffice	
1 N/A	05/04/2017		Court of Common Pleas - Lebanon County
Pursue Delinquency			
2 N/A	05/04/2017		Court of Common Pleas - Lebanon County
Payment Plan Introduction Letter			
1 (41)	05/09/2017		Christy, Andrew Chapman
Notice of Withdrawal of Petition for Writ of Habeas Corpus			
2 (42)	05/09/2017		Christy, Andrew Chapman
Transcript Request			
To Ct Reporter for 4/6/17 proceedings			
1 (43)	05/16/2017	05/12/2017	Tylwalk, John C.
Order Granting Motion for Transcripts Fee Waiver			
Christy, Andrew Chapman		Lebanon County Clerk of Courts	
05/16/2017		First Class	
Lebanon County Court Administration		Lebanon County Clerk of Courts	
05/16/2017		Interoffice	
1 (44)	05/22/2017		Christy, Andrew Chapman
Notice of Appeal to the Superior Court			

CPCMS 9082

Printed: 08/08/2017

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COURT OF COMMON PLEAS OF LEBANON COUNTY

SECURE DOCKET



Docket Number: CP-38-CR-0001838-2012

CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania

v.

William Perez Diaz

Page 19 of 28

ENTRIES

Sequence Number	CP Filed Date	Document Date	Filed By
2	05/22/2017		Christy, Andrew Chapman
Motion to Proceed in In Forma Pauperis			
3	05/22/2017		Christy, Andrew Chapman
Motion for Transcript Fee Waiver			
4	05/22/2017	05/24/2017	Kline, Samuel A.
Order Granting Motion to Proceed In Forma Pauperis			
1	05/24/2017	05/24/2017	Kline, Samuel A.
Concise Statement Order			
Christy, Andrew Chapman		Lebanon County Clerk of Courts	
05/24/2017		First Class	
Diaz, William Perez		Lebanon County Clerk of Courts	
05/24/2017		First Class	
Lebanon County District Attorney's Office		Lebanon County Clerk of Courts	
05/24/2017		Interoffice	
Superior Court of Pennsylvania - Middle District		Lebanon County Clerk of Courts	
05/24/2017		First Class	
1	06/05/2017		Court of Common Pleas - Lebanon County
Do Not Pursue Delinquency			
1	06/08/2017		Superior Court of Pennsylvania - Middle District
Appeal Docket Sheet from Superior Court of PA 893 MDA 2017			
1	06/09/2017		Christy, Andrew Chapman
Concise Statement of Errors Complained on Appeal			
1	06/19/2017		Lebanon County Court Administration
Pa.R.A.P. 1922(a) Notice of Lodging Transcript of Record			
Fines & Costs April 24, 2017			
transcribed by Stephanie Axarlis, Court Administrator			

COURT OF COMMON PLEAS OF LEBANON COUNTY

SECURE DOCKET



Docket Number: CP-38-CR-0001838-2012
CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania
v.
William Perez Diaz

Page 20 of 28

ENTRIES

Sequence Number	CP Filed Date	Document Date	Filed By
2 (49)	06/19/2017		Lebanon County Court Administration
Transcript of Proceedings Filed Fines & Costs April 24, 2017 transcribed by Stephanie Axarlis, Court Administrator			
3 (50)	06/19/2017		Lebanon County Court Administration
Pa.R.A.P. 1922(a) Notice of Lodging Transcript of Record Fines & Costs April 24, 2017 (Individual Case) transcribed by Stephanie Axarlis, Court Administrator			
4 (51)	06/19/2017		Lebanon County Court Administration
Transcript of Proceedings Filed Fines & Costs April 24, 2017 (Individual Case) transcribed by Stephanie Axarlis, Court Administrator			
5 (52)	06/19/2017		Lebanon County Court Administration
Pa.R.A.P. 1922(a) Notice of Lodging Transcript of Record Bench Warrant Hearing April 6, 2017 transcribed by Stephanie Axarlis, Court Administrator			
6 (53)	06/19/2017		Lebanon County Court Administration
Transcript of Proceedings Filed Bench Warrant Hearing April 6, 2017 transcribed by Stephanie Axarlis, Court Administrator			
1 (54)	08/01/2017	07/31/2017	Kline, Samuel A.
Order Directing File to be sent to Superior Court Christy, Andrew Chapman Lebanon County Clerk of Courts 08/01/2017 First Class Lebanon County District Attorney's Office Lebanon County Clerk of Courts 08/01/2017 Interoffice Superior Court of Pennsylvania - Middle District Lebanon County Clerk of Courts 08/01/2017 First Class			
2 (55)	08/01/2017	08/01/2017	Kline, Samuel A.
Amended Order Directing File to be sent to Superior Court Christy, Andrew Chapman Lebanon County Clerk of Courts 08/01/2017 First Class			

COURT OF COMMON PLEAS OF LEBANON COUNTY

SECURE DOCKET



Docket Number: CP-38-CR-0001838-2012

CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania

v.

William Perez Diaz

Page 21 of 28

ENTRIES

<u>Sequence Number</u>	<u>CP Filed Date</u>	<u>Document Date</u>	<u>Filed By</u>
<u>Service To</u>		<u>Service By</u>	
<u>Issue Date</u>	<u>Service Type</u>	<u>Status Date</u>	<u>Service Status</u>
Lebanon County District Attorney's Office		Lebanon County Clerk of Courts	
08/01/2017	Interoffice		
Superior Court of Pennsylvania - Middle District		Lebanon County Clerk of Courts	
08/01/2017	First Class		

1	(SLO)	08/08/2017	Smith, Barbara A.
P.a.R.A.P. 1931(d)- Compliance Certificate of Service			
Numbered Docket Entries for Superior Courts			
Christy, Andrew Chapman		Lebanon County Clerk of Courts	
08/08/2017	First Class		
Lebanon County District Attorney's Office		Lebanon County Clerk of Courts	
08/08/2017	Interoffice		

COURT OF COMMON PLEAS OF LEBANON COUNTY

DOCKET



Docket Number: CP-38-CR-0001838-2012

CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania

v.

William Perez Diaz

Page 9 of 11

ENTRIES

<u>Sequence Number</u>	<u>CP Filed Date</u>	<u>Document Date</u>	<u>Filed By</u>
2	05/02/2017		Bovard, Kevin Matthew
Entry of Appearance			
3	05/02/2017		Christy, Andrew Chapman
Petition for Writ of Habeas Corpus			
1	05/09/2017		Christy, Andrew Chapman
Transcript Request			
To Ct Reporter for 4/6/17 proceedings			

PAYMENT PLAN SUMMARY

<u>Payment Plan No</u>	<u>Payment Plan Freq.</u>	<u>Next Due Date</u>	<u>Active</u>	<u>Overdue Amt</u>
<u>Responsible Participant</u>			<u>Suspended</u>	<u>Next Due Amt</u>
38-2013-P000001299	Monthly	06/04/2017	Yes	\$0.00
Diaz, William Perez			No	\$100.00

Payment Plan History:	<u>Receipt Date</u>		<u>Payer Name</u>	<u>Participant Role</u>	<u>Amount</u>
	02/27/2015	Payment	Diaz, William Perez	Defendant	\$50.00
	03/09/2015	Payment	Vazquez, Evelyn	Surety	\$50.00
	03/23/2015	Payment	Diaz, William Perez	Defendant	\$50.00
	04/10/2015	Payment	Diaz, William Perez	Defendant	\$50.00
	05/08/2015	Payment	Vazquez, Evelyn	Surety	\$100.00
	06/12/2015	Payment	Diaz, William Perez	Defendant	\$100.00
	07/09/2015	Payment	Diaz, William Perez	Defendant	\$100.00
	08/10/2015	Payment	Diaz, William Perez	Defendant	\$100.00
	09/11/2015	Payment	Diaz, William Perez	Defendant	\$100.00
	10/09/2015	Payment	Diaz, William Perez	Defendant	\$100.00
	11/09/2015	Payment	Diaz, William Perez	Defendant	\$100.00
	12/10/2015	Payment	Diaz, William Perez	Defendant	\$100.00
	01/11/2016	Payment	Diaz, William Perez	Defendant	\$70.00
	01/13/2016	Payment	Diaz, William Perez	Defendant	\$30.00
	02/12/2016	Payment	Diaz, William Perez	Defendant	\$100.00
	03/15/2016	Payment	Diaz, William Perez	Defendant	\$100.00

COURT OF COMMON PLEAS OF LEBANON COUNTY

DOCKET

Docket Number: CP-38-CR-0001838-2012

CRIMINAL DOCKET

Court Case



Commonwealth of Pennsylvania

v.

William Perez Diaz

Page 10 of 11

CASE FINANCIAL INFORMATION

Last Payment Date: 03/15/2016

Total of Last Payment: -\$100.00

Diaz, William Perez Defendant	<u>Assessment</u>	<u>Payments</u>	<u>Adjustments</u>	<u>Non Monetary Payments</u>	<u>Total</u>
Costs/Fees					
Sheriff's Fee - Bench Warrant Service Cost (Leb)	\$79.00	-\$79.00	\$0.00	\$0.00	\$0.00
Bail Forfeiture - County	\$100.00	-\$100.00	\$0.00	\$0.00	\$0.00
Sheriff's Fee - Bench Warrant Service Cost (Leb)	\$69.00	-\$69.00	\$0.00	\$0.00	\$0.00
Sheriff's Fee - Bench Warrant Service Cost (Leb)	\$114.65	-\$114.65	\$0.00	\$0.00	\$0.00
ATJ	\$3.00	-\$3.00	\$0.00	\$0.00	\$0.00
Admin-Co-Misd/Fel Cases (Lebanon)	\$38.50	-\$38.50	\$0.00	\$0.00	\$0.00
All Misd & Fel Cases Disp During/After Trial (Leb)	\$156.00	-\$156.00	\$0.00	\$0.00	\$0.00
Automation Fee (Lebanon)	\$5.00	-\$5.00	\$0.00	\$0.00	\$0.00
Booking Center Fee (Lebanon)	\$300.00	-\$300.00	\$0.00	\$0.00	\$0.00
CJES	\$2.25	-\$2.25	\$0.00	\$0.00	\$0.00
Commonwealth Cost - HB627 (Act 167 of 1992)	\$19.20	-\$6.79	\$0.00	\$0.00	\$12.41
Costs of Prosecution - CJEA	\$50.00	-\$17.66	\$0.00	\$0.00	\$32.34
County Court Cost (Act 204 of 1976)	\$28.00	-\$9.90	\$0.00	\$0.00	\$18.10
Crime Victims Compensation (Act 96 of 1984)	\$35.00	-\$35.00	\$0.00	\$0.00	\$0.00
DNA Detection Fund (Act 185-2004)	\$250.00	-\$88.25	\$0.00	\$0.00	\$161.75
Domestic Violence Compensation (Act 44 of 1988)	\$10.00	-\$3.54	\$0.00	\$0.00	\$6.46
Firearm Education and Training Fund	\$5.00	-\$1.79	\$0.00	\$0.00	\$3.21
JCPS	\$10.25	-\$10.25	\$0.00	\$0.00	\$0.00
Judicial Computer Project	\$8.00	-\$8.00	\$0.00	\$0.00	\$0.00
Public Safety Fee (Lebanon)	\$50.00	-\$50.00	\$0.00	\$0.00	\$0.00
State Court Costs (Act 204 of 1976)	\$12.80	-\$4.41	\$0.00	\$0.00	\$8.39
Victim Witness Service (Act 111 of 1998)	\$25.00	-\$25.00	\$0.00	\$0.00	\$0.00
Sheriff's Fee - Bench Warrant Service Cost (Leb)	\$106.82	-\$106.82	\$0.00	\$0.00	\$0.00
Sheriff's Fee - Bench Warrant Service Cost (Leb)	\$208.88	\$0.00	\$0.00	\$0.00	\$208.88
Costs/Fees Totals:	\$1,686.35	-\$1,234.81	\$0.00	\$0.00	\$451.54

COURT OF COMMON PLEAS OF LEBANON COUNTY

DOCKET



Docket Number: CP-38-CR-0001838-2012

CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania

v.

William Perez Diaz

Page 11 of 11

CASE FINANCIAL INFORMATION

Diaz, William Perez Defendant	<u>Assessment</u>	<u>Payments</u>	<u>Adjustments</u>	<u>Non Monetary Payments</u>	<u>Total</u>
Fines					
Crimes Code, etc.	\$400.00	-\$141.21	\$0.00	\$0.00	\$258.79
Fines Totals:	\$400.00	-\$141.21	\$0.00	\$0.00	\$258.79
Restitution					
Restitution	\$23.98	-\$23.98	\$0.00	\$0.00	\$0.00
Restitution Totals:	\$23.98	-\$23.98	\$0.00	\$0.00	\$0.00
Grand Totals:	\$2,110.33	-\$1,400.00	\$0.00	\$0.00	\$710.33

** - Indicates assessment is subrogated

COURT OF COMMON PLEAS OF LEBANON COUNTY

SECURE DOCKET



Docket Number: CP-38-CR-0001175-2013

CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania

v.

William Perez Diaz

Page 5 of 17

COMMONWEALTH INFORMATION

Name: David J. Arnold Jr.

District Attorney

Supreme Court No: 078478

Phone Number(s):
717-228-4403 (Phone)

Address:

Lebanon CO Da's Office
400 S 8TH St RM 11
Lebanon, PA 17042-6794

ATTORNEY INFORMATION

Name: Andrew Chapman Christy

Private

Supreme Court No: 322053

Rep. Status: Active

Phone Number(s):

Address:

Address Unknown

Name: Elizabeth Judd

Public Defender

Supreme Court No: 085167

Rep. Status: Inactive

Phone Number(s):
717-228-4421 (Phone)

Address:

Lebanon CO Pd's Office
400 S 8TH St RM 122
Lebanon, PA 17042-6794

Representing: Diaz, William Perez

Name: Kevin Matthew Bovard

Co-Counsel

Supreme Court No: 310818

Rep. Status: Active

Phone Number(s):
415-420-2168 (Phone)

Address:

Baker Hosteller Llp
2929 Arch St Fl 12
Philadelphia, PA 19104-2891

Representing: Diaz, William Perez

ENTRIES

Sequence Number	CP Filed Date	Document Date	Filed By
1 (D)	08/23/2013		Diaz, William Perez
Bail Posted - Diaz, William Perez			

COURT OF COMMON PLEAS OF LEBANON COUNTY

SECURE DOCKET



Docket Number: CP-38-CR-0001175-2013
CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania
v.
William Perez Diaz

Page 6 of 17

ENTRIES

Sequence Number	CP Filed Date	Document Date	Filed By
2 <u>(1)</u> <i>conf</i>	06/23/2013		Garver, Carl Russell
Bail Set - Diaz, William Perez			
1 <u>(2)</u>	08/22/2013		MDJ-52-2-01
Original Papers Received from Lower Court			
2 <u>(3)</u>	08/22/2013	08/22/2013	Tylwalk, John C.
Bench Warrant Issued			
Service: DA, Inofc; Prison, Inofc; Sheriff, Handcarried; Court Admin, Inofc.; Central Booking, Inofc; County Solicitor, Fax			
1 <u>(4)</u>	08/26/2013		Lebanon County Court Administration
Notice: Three Date Letter			
1 <i>NIA</i>	08/27/2013		Lebanon County Court Administration
Arraignment Scheduled 10/09/2013 8:30AM			
8/22/13 BW issued FTA Prel. Hrg.			
2 <i>NIA</i>	08/27/2013		Lebanon County Court Administration
Call of the List Scheduled 11/21/2013 8:30AM			
3 <i>NIA</i>	08/27/2013		Lebanon County Court Administration
Crim Jury Trial Scheduled 12/02/2013 8:30AM			
1 <u>(5)</u>	09/06/2013		Commonwealth of Pennsylvania
Information Filed			
1 <i>NIA</i>	10/09/2013		Lebanon County Court Administration
Call of the List Cancelled			
2 <i>NIA</i>	10/09/2013		Lebanon County Court Administration
Crim Jury Trial Cancelled			
1 <u>(6)</u>	10/05/2014		Heuyard, Stacie B.
Bench Warrant Returned			
1 <i>NIA</i>	10/06/2014		Lebanon County Court Administration
Arraignment Scheduled 10/15/2014 8:30AM			

COURT OF COMMON PLEAS OF LEBANON COUNTY

SECURE DOCKET



Docket Number: CP-38-CR-0001175-2013

CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania

v.

William Perez Diaz

Page 7 of 17

ENTRIES

Sequence Number	CP Filed Date	Document Date	Filed By
2 NVA	10/06/2014		Lebanon County Court Administration
Call of the List Scheduled 11/20/2014 8:30AM			
3 NLA	10/06/2014		Lebanon County Court Administration
Crim Jury Trial Scheduled 12/01/2014 8:30AM			
4 (7)	10/06/2014	10/06/2014	Diaz, William Perez
Waiver of Appearance at Arraignment			
5 (8)	10/06/2014	10/06/2014	Charles, Bradford H.
Order Vacating Bench Warrant			
Lebanon County Solicitor		Lebanon County Court Administration	
10/06/2013	Fax		
Diaz, William Perez		Lebanon County Clerk of Courts	
10/06/2014	Hand Delivered-Open		
Lebanon County Adult Probation Unit		Lebanon County Court Administration	
10/06/2014	Interoffice		
Lebanon County Correctional Facility		Lebanon County Clerk of Courts	
10/06/2014	Hand Delivered-Open		
Lebanon County Court Administration		Lebanon County Clerk of Courts	
10/06/2014	Hand Delivered		
Lebanon County District Attorney's Office		Lebanon County Court Administration	
10/06/2014	Interoffice		
6	10/06/2014		Charles, Bradford H.
Bail Set - Diaz, William Perez			
7 (9)	10/06/2014		Diaz, William Perez
Bail Posted - Diaz, William Perez			
1 NLA	10/07/2014		Lebanon County Court Administration
Arraignment Cancelled			
1 (10)	10/16/2014		Judd, Elizabeth
Entry of Appearance appl for PD			

CPCMS 6082

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021

COURT OF COMMON PLEAS OF LEBANON COUNTY

SECURE DOCKET



Docket Number: CP-38-CR-0001175-2013

CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania

v.

William Perez Diaz

Page 8 of 17

ENTRIES

Sequence Number	CP Filed Date	Document Date	Filed By
1 <u>N/A</u>	11/20/2014		Lebanon County Court Administration
Crim Jury Trial Cancelled			
2 <u>11</u>	11/20/2014	11/20/2014	Eby, Robert J.
Bench Warrant Issued			
Service: Pub Def Judd, Info; Sheriff, Handcarried; DA, Info; Court Admin, Info; Solicitor & Prison, Fax; Adult Prob, Info.			
1 <u>N/A</u>	11/21/2014		Lebanon County Court Administration
Call of the List Scheduled 12/18/2014 8:30AM			
(Prev. BW: 11/20/14 - Call)			
2 <u>N/A</u>	11/21/2014		Lebanon County Court Administration
Crim Jury Trial Scheduled 01/05/2015 8:30AM			
3 <u>12</u>	11/21/2014		Gaidos, Stephen K.
Bench Warrant Returned			
4 <u>13</u>	11/21/2014		Charles, Bradford H.
Order Vacating Bench Warrant			
Service To: Defendant and LCCF Hand Delivered in Open Court by COC; Court Admin Hand Delivered by COC; DA's Office and Adult Probation Interoffice by Court Admin; County Solicitor Faxed by Court Admin			
5	11/21/2014		Charles, Bradford H.
Bail Set - Diaz, William Perez			
6 <u>14</u>	11/21/2014		Diaz, William Perez
Bail Posted - Diaz, William Perez			
1	12/18/2014		Tylwalk, John C.
Guilty Plea - Negotiated			
2 <u>15</u>	12/18/2014		Diaz, William Perez
Guilty Plea Colloquy			
3 <u>10</u>	12/18/2014		Lebanon County District Attorney's Office
Sentencing Hearing Notice			

GPCMS 9082

Printed: 08/08/2017

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022

COURT OF COMMON PLEAS OF LEBANON COUNTY

SECURE DOCKET



Docket Number: CP-38-CR-0001175-2013

CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania

v.

William Perez Diaz

Page 9 of 17

ENTRIES

Sequence Number	CP Filed Date	Document Date	Filed By
1 NIA	12/19/2014		Court of Common Pleas - Lebanon County
Assigned to Judge: Kline, Samuel A.			
2 NIA	12/19/2014		Lebanon County Court Administration
Crim Jury Trial Cancelled			
3 NIA	12/19/2014		Lebanon County Court Administration
Sentencing Scheduled 01/28/2015 8:30AM			
1 (17)	01/28/2015		Diaz, William Perez
Written Post-Sentence Colloquy			
2	01/28/2015		Kline, Samuel A.
Order - Sentence/Penalty Imposed			
3 (18)	01/28/2015	01/28/2015	Kline, Samuel A.
Sentence/Penalty Order Filed			
Diaz, William Perez		Lebanon County Clerk of Courts	
01/28/2015	Hand Delivered-Open		
	Court		
Lebanon County Adult Probation Unit		Lebanon County Clerk of Courts	
01/28/2015	Hand Delivered-Open		
	Court		
Lebanon County Correctional Facility		Lebanon County Clerk of Courts	
01/28/2015	Hand Delivered-Open		
	Court		
Lebanon County District Attorney's Office		Lebanon County Clerk of Courts	
01/28/2015	Hand Delivered-Open		
	Court		
Lebanon County Public Defender's Office		Lebanon County Clerk of Courts	
01/28/2015	Hand Delivered-Open		
	Court		
1 NIA	02/04/2015		Court of Common Pleas - Lebanon County
Penalty Assessed			

CPCMS 9082

Printed: 08/08/2017

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023

COURT OF COMMON PLEAS OF LEBANON COUNTY

SECURE DOCKET



Docket Number: CP-38-CR-0001175-2013

CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania

v.

William Perez Diaz

Page 10 of 17

ENTRIES

Sequence Number	CP Filed Date	Document Date	Filed By
1 NIA	06/06/2016		Court of Common Pleas - Lebanon County
Payment Plan Introduction Letter			
1 NIA	11/02/2016		Court of Common Pleas - Lebanon County
Delinquency Notice Filed - 54 Days Overdue			
1 (17)	11/29/2016		Lebanon County Probation Department
Contempt Fines and Costs Scheduled 01/30/2017 9:00AM			
2 NIA	11/29/2016		Court of Common Pleas - Lebanon County
Delinquency Notice - Hearing Scheduled January 30, 2017			
Diaz, William Perez		CDU Adult Probation	
11/29/2016	First Class		
3 NIA	11/29/2016		Court of Common Pleas - Lebanon County
Delinquency Notice Filed - 81 Days Overdue			
1 NIA	01/30/2017		Court of Common Pleas - Lebanon County
Do Not Pursue Delinquency			
1 (20)	01/31/2017	01/30/2017	Kline, Samuel A.
Bench Warrant Issued			
FTA Contempt Fines and Costs - 01/30/2017 - BAIL \$1,600. CASH ONLY			
Diaz, William Perez		Lebanon County Clerk of Courts	
01/31/2017	First Class		
Lebanon County Fines and Costs		Lebanon County Clerk of Courts	
Collection			
01/31/2017	Interoffice		
Lebanon County Sheriff's Department		Lebanon County Clerk of Courts	
01/31/2017	Hand Delivered		
1 (21)	04/05/2017		McCarty, Charles E. III
Bench Warrant - Failure to Appear (Returned Served - Closed)			

COURT OF COMMON PLEAS OF LEBANON COUNTY

SECURE DOCKET



Docket Number: CP-38-CR-0001175-2013

CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania

v.

William Perez Diaz

Page 11 of 17

ENTRIES

Sequence Number	CP Filed Date	Document Date	Filed By
2 MIA	04/05/2017		Court of Common Pleas - Lebanon County
Pursue Delinquency			
1 MIA	04/06/2017		Lebanon County Court Administration
Contempt Fines and Costs Scheduled 04/24/2017 9:00AM			
2 (22)	04/06/2017	04/06/2017	Kline, Samuel A.
Bench Warrant - Failure to Appear (Vacated - Closed)			
Diaz, William Perez		Lebanon County Clerk of Courts	
04/06/2017	Hand Delivered-Open Court		
Lebanon County Adult Probation Unit		Lebanon County Court Administration	
04/06/2017	Interoffice		
Lebanon County Correctional Facility		Lebanon County Clerk of Courts	
04/06/2017	Hand Delivered-Open Court		
Lebanon County Court Administration		Lebanon County Clerk of Courts	
04/06/2017	Hand Delivered		
Lebanon County District Attorney's Office		Lebanon County Court Administration	
04/06/2017	Interoffice		
Lebanon County Solicitor		Lebanon County Court Administration	
04/06/2017	Fax		
3	04/06/2017		Kline, Samuel A.
Bail Set - Diaz, William Perez			
1 MIA	04/24/2017		Court of Common Pleas - Lebanon County
Do Not Pursue Delinquency			
1 (23)	04/25/2017	04/24/2017	Kline, Samuel A.
Contempt Order of Court- Remand to LCCF for 1 Month			
Diaz, William Perez		Lebanon County Clerk of Courts	
04/25/2017	First Class		
Lebanon County Correctional Facility		Lebanon County Clerk of Courts	
04/25/2017	Interoffice		
Lebanon County Fines and Costs Collection		Lebanon County Clerk of Courts	
04/25/2017	Interoffice		

GPCMS 9082

Printed: 08/08/2017

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COURT OF COMMON PLEAS OF LEBANON COUNTY

SECURE DOCKET



Docket Number: CP-38-CR-0001175-2013

CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania

v.

William Perez Diaz

Page 12 of 17

ENTRIES

Sequence Number	CP Filed Date	Document Date	Filed By
<u>Service To</u>	<u>Issue Date</u>	<u>Service By</u>	<u>Status Date</u>
Lebanon County Sheriff's Department	Lebanon County Clerk of Courts		
04/25/2017	Interoffice		
1 (24)	05/02/2017		Christy, Andrew Chapman
Entry of Appearance			
2 (25)	05/02/2017		Bovard, Kevin Matthew
Entry of Appearance			
3	05/02/2017		Christy, Andrew Chapman
Petition for Writ of Habeas Corpus			
4 (26)	05/02/2017		Court of Common Pleas - Lebanon County
Order Unsigned			
Christy, Andrew Chapman	Lebanon County Clerk of Courts		
05/04/2017	First Class		
Lebanon County District Attorney's Office	Lebanon County Clerk of Courts		
05/04/2017	Interoffice		
1 H17	05/04/2017		Court of Common Pleas - Lebanon County
Pursue Delinquency			
2 H17	05/04/2017		Court of Common Pleas - Lebanon County
Payment Plan Introduction Letter			
1 (27)	05/09/2017		Christy, Andrew Chapman
Notice of Withdrawal of Petition for Writ of Habeas Corpus			
2 (28)	05/09/2017		Christy, Andrew Chapman
Transcript Request			
To Ct Reporter for 4/8/17 proceedings			
1 (29)	05/16/2017	05/12/2017	Tylwalk, John C.
Order Granting Motion for Transcripts Fee Waiver			

CPCMS 9082

Printed: 08/06/2017

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COURT OF COMMON PLEAS OF LEBANON COUNTY

SECURE DOCKET

Docket Number: CP-38-CR-0001175-2013

CRIMINAL DOCKET

Court Case



Commonwealth of Pennsylvania

v.

William Perez Diaz

Page 13 of 17

ENTRIES

Sequence Number	CP Filed Date	Document Date	Filed By
<u>Service To</u>	<u>Issue Date</u>	<u>Service Type</u>	<u>Service By</u>
Christy, Andrew Chapman	05/16/2017	First Class	Lebanon County Clerk of Courts
Lebanon County Court Administration	05/16/2017	Interoffice	Lebanon County Clerk of Courts
1	05/22/2017		Christy, Andrew Chapman
Notice of Appeal to the Superior Court			
2 (30)	05/22/2017	05/24/2017	Kline, Samuel A.
Order Granting Motion to Proceed In Forma Pauperis			
3	05/22/2017		Christy, Andrew Chapman
Motion for Leave to Proceed In Forma Pauperis			
1 (31)	05/24/2017	05/24/2017	Kline, Samuel A.
Concise Statement Order			
Christy, Andrew Chapman	05/24/2017	First Class	Lebanon County Clerk of Courts
Diaz, William Perez	05/24/2017	First Class	Lebanon County Clerk of Courts
Lebanon County District Attorney's Office	05/24/2017	Interoffice	Lebanon County Clerk of Courts
Superior Court of Pennsylvania - Middle District	05/24/2017	First Class	Lebanon County Clerk of Courts
1 NIA	06/05/2017		Court of Common Pleas - Lebanon County
Do Not Pursue Delinquency			
1 (32)	06/08/2017		Superior Court of Pennsylvania - Middle District
Appeal Docket Sheet from Superior Court of PA			
893 MDA 2017			
1 (33)	06/09/2017		Christy, Andrew Chapman
Concise Statement of Errors Complained on Appeal			

GPCMS 9082

Printed: 06/08/2017

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027

COURT OF COMMON PLEAS OF LEBANON COUNTY

SECURE DOCKET



Docket Number: CP-38-CR-0001175-2013
CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania
v.
William Perez Diaz

Page 14 of 17

ENTRIES

Sequence Number	CP Filed Date	Document Date	Filed By
1 (34)	06/19/2017		Lebanon County Court Administration
Pa.R.A.P. 1922(a) Notice of Lodging Transcript of Record Fines & Costs April 24, 2017 transcribed by Stephanie Axarlis, Court Administrator			
2 (35)	06/19/2017		Lebanon County Court Administration
Transcript of Proceedings Filed Fines & Costs April 24, 2017 transcribed by Stephanie Axarlis, Court Administrator			
3 (36)	06/19/2017		Lebanon County Court Administration
Pa.R.A.P. 1922(a) Notice of Lodging Transcript of Record Fines & Costs April 24, 2017 (Individual Case) transcribed by Stephanie Axarlis, Court Administrator			
4 (37)	06/19/2017		Lebanon County Court Administration
Transcript of Proceedings Filed Fines & Costs April 24, 2017 (Individual Case) transcribed by Stephanie Axarlis, Court Administrator			
5 (38)	06/19/2017		Lebanon County Court Administration
Pa.R.A.P. 1922(a) Notice of Lodging Transcript of Record Bench Warrant Hearing April 6, 2017 transcribed by Stephanie Axarlis, Court Administrator			
6 (39)	06/19/2017		Lebanon County Court Administration
Transcript of Proceedings Filed Bench Warrant Hearing April 6, 2017 transcribed by Stephanie Axarlis, Court Administrator			
7 (40)	08/01/2017	07/31/2017	Kline, Samuel A.
Order Directing File to be sent to Superior Court Christy, Andrew Chapman Lebanon County Clerk of Courts 08/01/2017 First Class Lebanon County District Attorney's Office Lebanon County Clerk of Courts 08/01/2017 Interoffice Superior Court of Pennsylvania - Middle District Lebanon County Clerk of Courts 08/01/2017 First Class			

CPCMS 9082

Printed: 08/08/2017

Recent entries made in the court filing offices may not be immediately reflected on these docket sheets. Neither the courts of the Unified Judicial System of the Commonwealth of Pennsylvania nor the Administrative Office of Pennsylvania Courts assume any liability for inaccurate or delayed data, errors or omissions on these reports. Docket Sheet information should not be used in place of a criminal history background check which can only be provided by the Pennsylvania State Police. Moreover an employer who does not comply with the provisions of the Criminal History Record Information Act may be subject to civil liability as set forth in 18 Pa.C.S. Section 9183.

COURT OF COMMON PLEAS OF LEBANON COUNTY

SECURE DOCKET



Docket Number: CP-38-CR-0001175-2013

CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania

v.

William Perez Diaz

Page 15 of 17

ENTRIES

Sequence Number	CP Filed Date	Document Date	Filed By
<u>Service To</u>		<u>Service By</u>	
<u>Issue Date</u>	<u>Service Type</u>	<u>Status Date</u>	<u>Service Status</u>
2 (41)	08/01/2017	08/01/2017	Kline, Samuel A.
Amended Order Directing File to be sent to Superior Court			
Christy, Andrew Chapman		Lebanon County Clerk of Courts	
08/01/2017	First Class		
Lebanon County District Attorney's Office		Lebanon County Clerk of Courts	
08/01/2017	Interoffice		
Superior Court of Pennsylvania - Middle District		Lebanon County Clerk of Courts	
08/01/2017	First Class		
1 (42)	08/08/2017		Smith, Barbara A.
P.a.R.A.P. 1931(d)- Compliance Certificate of Service			
Numbered Docket Entries for Superior Courts			
Christy, Andrew Chapman		Lebanon County Clerk of Courts	
08/08/2017	First Class		
Lebanon County District Attorney's Office		Lebanon County Clerk of Courts	
08/08/2017	Interoffice		

PAYMENT PLAN SUMMARY

Payment Plan No	Payment Plan Freq.	Next Due Date	Active	Overdue Amt
<u>Responsible Participant</u>		<u>SID</u>	<u>Suspended</u>	<u>Next Due Amt</u>
38-2015-P000000258	Monthly	01/04/2018	Yes	\$0.00
Diaz, William Perez		359-13-18-1	No	\$89.67
<u>Payment Plan History:</u>		<u>Receipt Date</u>	<u>Payor Name</u>	<u>Participant Role</u>
				<u>Amount</u>

COURT OF COMMON PLEAS OF LEBANON COUNTY

DOCKET

Docket Number: CP-38-CR-0001175-2013

CRIMINAL DOCKET

Court Case



Commonwealth of Pennsylvania

v.

William Perez Diaz

Page 7 of 8

CASE FINANCIAL INFORMATION

Last Payment Date:

Total of Last Payment:

Diaz, William Perez Defendant	<u>Assessment</u>	<u>Payments</u>	<u>Adjustments</u>	<u>Non Monetary Payments</u>	<u>Total</u>
Costs/Fees					
Sheriff's Fee - Bench Warrant Service Cost (Leb)	\$39.00	\$0.00	\$0.00	\$0.00	\$39.00
ATJ	\$3.00	\$0.00	\$0.00	\$0.00	\$3.00
Admin-Co-Misd/Fel Cases (Lebanon)	\$38.50	\$0.00	\$0.00	\$0.00	\$38.50
All Misd & Fel Cases Disp During/After Trial (Leb)	\$173.00	\$0.00	\$0.00	\$0.00	\$173.00
Automation Fee (Lebanon)	\$5.00	\$0.00	\$0.00	\$0.00	\$5.00
Booking Center Fee (Lebanon)	\$300.00	\$0.00	\$0.00	\$0.00	\$300.00
CJES	\$2.25	\$0.00	\$0.00	\$0.00	\$2.25
Commonwealth Cost - HB627 (Act 167 of 1992)	\$9.90	\$0.00	\$0.00	\$0.00	\$9.90
County Court Cost (Act 204 of 1976)	\$32.10	\$0.00	\$0.00	\$0.00	\$32.10
Crime Victims Compensation (Act 96 of 1984)	\$35.00	\$0.00	\$0.00	\$0.00	\$35.00
Domestic Violence Compensation (Act 44 of 1988)	\$10.00	\$0.00	\$0.00	\$0.00	\$10.00
Firearm Education and Training Fund	\$5.00	\$0.00	\$0.00	\$0.00	\$5.00
JCPS	\$10.25	\$0.00	\$0.00	\$0.00	\$10.25
Judicial Computer Project	\$8.00	\$0.00	\$0.00	\$0.00	\$8.00
Public Safety Fee (Lebanon)	\$50.00	\$0.00	\$0.00	\$0.00	\$50.00
State Court Costs (Act 204 of 1976)	\$11.50	\$0.00	\$0.00	\$0.00	\$11.50
Substance Abuse Education (Act 198 of 2002) (Leb)	\$50.00	\$0.00	\$0.00	\$0.00	\$50.00
Substance Abuse Education (Act 198 of 2002) (Leb)	\$50.00	\$0.00	\$0.00	\$0.00	\$50.00
Victim Witness Service (Act 111 of 1998)	\$25.00	\$0.00	\$0.00	\$0.00	\$25.00
OSP (Lebanon/State) (Act 35 of 1991)	\$300.00	\$0.00	\$0.00	\$0.00	\$300.00
OSP (Lebanon/State) (Act 35 of 1991)	\$300.00	\$0.00	\$0.00	\$0.00	\$300.00
Civil Judgment (Lebanon)	\$39.50	\$0.00	\$0.00	\$0.00	\$39.50
Sheriff's Fee - Bench Warrant Service Cost (Leb)	\$39.00	\$0.00	\$0.00	\$0.00	\$39.00
Costs/Fees Totals:	\$1,536.00	\$0.00	\$0.00	\$0.00	\$1,536.00
Fines					
Crimes Code, etc.	\$100.00	\$0.00	\$0.00	\$0.00	\$100.00

COURT OF COMMON PLEAS OF LEBANON COUNTY

DOCKET

Docket Number: CP-38-CR-0001175-2013

CRIMINAL DOCKET

Court Case



Commonwealth of Pennsylvania

v.

William Perez Diaz

Page 8 of 8

CASE FINANCIAL INFORMATION

Diaz, William Perez Defendant	<u>Assessment</u>	<u>Payments</u>	<u>Adjustments</u>	<u>Non Monetary Payments</u>	<u>Total</u>
Fines Totals:	\$100.00	\$0.00	\$0.00	\$0.00	\$100.00
Grand Totals:	\$1,636.00	\$0.00	\$0.00	\$0.00	\$1,636.00

** - Indicates assessment is subrogated

IN THE COURT OF COMMON PLEAS
LEBANON COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:
	:
vs.	: CP-38-CR-1838-2012
	: CP-38-CR-1175-2013
WILLIAM PEREZ DIAZ	:

TRANSCRIPT OF PROCEEDINGS

BENCH WARRANT HEARINGS

April 6, 2017

COURTROOM NO. 2

Before

HON. SAMUEL A. KLINE,
JUDGE

Transcribed by:
Stephanie Axarlis, Esquire
Court Administrator

PROCEEDINGS

CLERK: Please stand up. Please raise your right hand. Do you swear or affirm the testimony which you shall give to the Court shall be the truth, the whole truth and nothing but the truth? Please answer out loud

DEFENDANT: Yes.

CLERK: Starting with you sir, please state your full name and mailing address:

DEFENDANT: William Perez Diaz, 1909 Center Street, Lebanon, PA.

CLERK: Please be seated.

JUDGE: Good afternoon, my name is Judge Samuel A. Kline, these are 72 hour bench warrant hearings being electronically recorded on Thursday, April 6, 2017 at 1:30 p.m.

* * *

JUDGE: Now, William Perez Diaz. Mr. Diaz this is at action number, there are two of them, 17 – 1175 of 2013 and 1838 of 2012. This is to inform you, you failed to appear for a fines and costs contempt hearing in January of this year, January 30. You're to appear for a new fines and costs contempt hearing April 24, 2017 at 8 uh 9:00 a.m. in Courtroom 2. You're advised you have the right to an attorney, if you can't afford one, upon request one will be provided. Bench warrant is vacated. Bail?

CDU OFFICER: Your Honor, this is the first fines and costs bench warrant on each docket. However, when reviewing Mr. Diaz's bench warrant history, it's worth noting that this is his fifth overall

JUDGE: Whoo

CDU OFFICER: bench warrant on his docket from 2013 and his third overall, sorry on the 2012 docket and his third overall on the 2013 case. We sent notice to a 1909 Center Street, here in Lebanon, notice was not returned to us. The last payment we received on this docket was back in March, 2016.

JUDGE: Where ya been?

DEFENDANT: I've been in Reading.

JUDGE: You've been in Reading. You obviously didn't notify us of your change of address, did you?

DEFENDANT:

JUDGE: Why didn't you make any payments?

DEFENDANT: To be honest,

JUDGE: Yeah, well I usually like honesty, that's better than lying under oath. Get you in trouble if you lie under oath.

DEFENDANT: Well when I was in Lebanon, I went to Reading (inaudible)

JUDGE: All right, I'm going to ask you the same question I asked Mr. Diaz, because you're not getting out on ROR. How much can you get me in bail? Cause you owe, let's see we have \$710 on one and \$1636 on the other, so ROR is not an option, okay.

DEFENDANT: Umm.

JUDGE: I'm all ears.

DEFENDANT: I have someone in Reading that can put maybe fifty to a hundred dollars and (inaudible) maybe twenty dollars. I'm not going to get ROR, I'm a very nice guy.

JUDGE: R&R is relax – rest and relaxation. ROR is released on your own recognizance, so I tell you what, I'm gonna be a nice guy and put a hundred dollars in bail on each one of these. Cash. And that's being very generous considering your prior history.

DEFENDANT: I thank you.

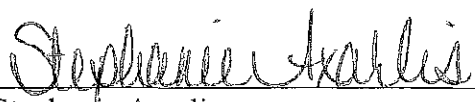
JUDGE: All right. Don't. Now – I'll give you all the lecture at one time at the end. All right. Cash only.

DEFENDANT: right away, right away, I have another address. My mom she lives in the Village, that would be the first place I'll go.

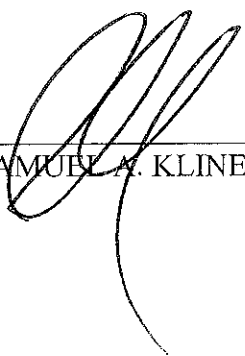
(Whereupon, the proceeding concluded)

I hereby certify that the transcript of the record of the within proceedings has been lodged this date June 19, 2017 in the Office of the Clerk of Courts. If no objection is made to said transcript within five (5) days from this date, it will be duly filed of record in the case.

I hereby certify that the proceedings are contained fully and accurately in the audio recording made by the Court on the hearing in the above cause, and that this copy is a correct transcription of the same.


Stephanie Axarlis

The foregoing record of the proceedings upon the hearing of the above cause is hereby approved and directed to be filed.


_____, J.
SAMUEL A. KLINE

**IN THE COURT OF COMMON PLEAS
LEBANON COUNTY, PENNSYLVANIA**

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:
	:
vs.	: CP-38-CR-1838-2012
	: CP-38-CR-1175-2013
WILLIAM PEREZ DIAZ	:

TRANSCRIPT OF PROCEEDINGS

FINES & COSTS

April 24, 2017

COURTROOM NO. 2

Before

**HON. SAMUEL A. KLINE,
JUDGE**

**Transcribed by:
Stephanie Axarlis, Esquire
Court Administrator**

PROCEEDINGS

CDU OFFICER: Twenty-six has already been called. Twenty-seven and twenty-eight were removed. Twenty-nine and thirty – William Diaz.

#29 and #30 – WILLIAM DIAZ

CLERK: Please raise your right hand. Do you swear or affirm the testimony which you shall give to the Court shall be the truth, the whole truth and nothing but the truth?

DEFENDANT: Yes.

CLERK: Please state your full name.

DEFENDANT: William Perez Diaz.

CDU OFFICER: Your Honor, this is the second time Mr. Diaz is scheduled for a contempt hearing. Previously one bench warrant issued. Payment plan is currently set at \$100 a month per agreement that he signed back on January 11, 2016.

JUDGE: William, did anybody come with any money?

DEFENDANT: I did get a letter from... that in Reading he does have a job for me... (inaudible)

JUDGE: The Court makes the following findings. This is the second time this has been scheduled. One previous bench warrant. Payments were set at \$100 a month per an agreement in January 2016. He's failed to pay since a year ago, over a year ago – March. With a balance of \$710.33 in one case and \$1636.00 in another. The Court finds the Defendant in contempt and directs he be

incarcerated in the Lebanon County Correctional Facility for a period of thirty days. He may purge himself of this contempt on number twenty-nine by paying \$100 on the account. And on number thirty by paying \$150. The Court has no objection to immediate work release. All right.

CDU OFFICER: Your Honor, if you could add a Court Ordered amount.

JUDGE: And the Court ordered amount of \$100 a month.

(Whereupon, the proceeding concluded)

I hereby certify that the transcript of the record of the within proceedings has been lodged this date June 19, 2017 in the Office of the Clerk of Courts. If no objection is made to said transcript within five (5) days from this date, it will be duly filed of record in the case.

I hereby certify that the proceedings are contained fully and accurately in the audio recording made by the Court on the hearing in the above cause, and that this copy is a correct transcription of the same.


Stephanie Axarlis

The foregoing record of the proceedings upon the hearing of the above cause is hereby approved and directed to be filed.


_____, J.
SAMUEL A. KLINE

White: LCCF; Yellow: Clerk of Courts/Prothonotary; Pink: Adult Probation/Other

Lebanon County Clerk of Courts-Prothonotary

Sentence/Commitment Form

DEFENDANT:

William Perez Diaz

OFFENSE:

F + C Contempt

ACTION No.

CP680 CR-100 200

S/L OTN:

L749676-4

SENTENCING JUDGE:

SA. Kline

SENTENCE:

L749676-4

LCCF - 30 days

prize ~~1000~~ 100-

bal 100 mth

CP. 38-CR-1175-2013

30 days

L7941124-1

150-

100 mth

SPECIAL CONDITIONS:

RECOMMENDED FOR WORK RELEASE: YES

X

/ NO

ACUTE MEDICAL PROBLEMS: YES

/ NO

DETAINERS:

HEARING DATE:

BAIL AMOUNT:

BENCH WARRANT:

OTHER REMARKS:

(CLERK)

Imv

(DATE)

04/24/17

(COURT STENOGRAPHER)

PLEASE CONTACT LEBANON COUNTY CORRECTIONAL FACILITY UPON DEFENDANTS RELEASE

**IN THE COURT OF COMMON PLEAS
FOR LEBANON COUNTY**

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA)	
)	
v.)	Case Nos. CP-38-CR-1838-2012
)	CP-38-CR-1175-2013
WILLIAM DIAZ)	
)	
)	
)	

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner William Diaz, by his undersigned attorneys, hereby petitions this Honorable Court for immediate release from the custody of the Lebanon County Correctional Facility on a Writ of Habeas Corpus, and as grounds therefor avers as follows:

I. Background

1. As a result of prior criminal convictions, Mr. Diaz currently owes \$710.33 in CP-38-CR-1838-2012 and \$1,636 in CP-38-CR-1175-2013 in fines and costs. The court docket reflects that his overdue amount is \$710.33 in CP-38-CR-1838-2005 and \$798.55 in CP-38-CR-1175-2013. Mr. Diaz has been incarcerated since April 6, 2017: he was held on \$100 bail until April 24, which he was unable to pay, and he has been held since April 24 because he lacks the \$250 necessary to pay a purge amount for a contempt entered that day for unpaid fines and costs.
2. For more than a year, Mr. Diaz has struggled to find employment that would permit him to provide for his basic life needs. *See* Exhibit A, Declaration of William Diaz (“Diaz Decl.”). His prior criminal convictions, particularly a retail theft conviction, have made it difficult to find employment. *Id.* at ¶1. Mr. Diaz does not own a car, and so when he has been able to secure employment, he has had transportation problems that have further

served as an obstacle to consistent employment. *Id.* By October 2016, Mr. Diaz was homeless and alternating between living on the streets and staying in the Hope Rescue Mission, a shelter in Reading, Pennsylvania. *Id.* at ¶ 6; Exhibit B, Declaration of Ernest Gumby (“Gumby Decl.”) at ¶¶1-2.

3. In November 2016, after his friend Ernest Gumby allowed him to stay in his apartment—subsidized by Mr. Gumby’s mother—Mr. Diaz searched unsuccessfully for work. Ex. A at ¶¶7-8; *see also* Ex. B at ¶¶3, 5; Exhibit C, Declaration of Margaret Wright (“Wright Decl.”) at ¶¶2-3. He was able to find just one alternative to bring in even the smallest amount of money necessary to live: he sold his blood plasma. *See* Ex. A., Diaz Decl. at ¶9; Ex. B, Gumby Decl. at ¶6; Ex. C, Wright Decl. at ¶¶3-4. Twice a week until he was arrested in this matter, his friend’s mother, Mrs. Wright, drove Mr. Diaz to Biomap USA so he could donate his plasma and earn up to \$70 a week. Ex. A., Diaz Decl. at ¶9; Ex. C, Wright Decl. at ¶4. Combined with his food stamps and the generosity of Mr. Gumby’s mother, Margaret Wright, the sale of his blood plasma allowed him to scrape by.
4. In each of his criminal cases, Mr. Diaz has been represented by the office of the public defender. Until his imprisonment in this matter, he was receiving public assistance in the form of food stamps. *See* Ex. A, Diaz Decl. at ¶10; Ex. B, Gumby Decl. at ¶7. These facts regarding his financial status “invite the presumption of indigence.” *Com v. Eggers*, 742 A.2d 174, 176 n.1 (Pa. Super. Ct. 1999). Mr. Diaz’s income from selling his blood plasma was well below the federal poverty guidelines, which are currently \$12,060 for a single individual. *See* Ex. D, a true and correct copy of Blood Plasma Payment Records from Biomap USA; *see also* U.S. Dep’t of Health and Human Services Office of the Assistant Secretary for Planning and Evaluation, “Poverty Guidelines,”

<https://aspe.hhs.gov/poverty-guidelines>.

5. Mr. Diaz appeared for the April 24, 2017¹ contempt hearing without a lawyer.² A Collections Officer with the Lebanon County Probation Collections and Disbursement Unit with training and experience in these proceedings represented the county at the hearing. Ex. A., Diaz Decl., ¶¶ 21, 25.
6. At that hearing before the Hon. Samuel A. Kline, the Court asked Mr. Diaz whether he or anyone else had any money to pay on his behalf towards his fines and costs. *Id.* at ¶22. At that point, Mr. Diaz had been in jail for three weeks because he could not post the \$100 bail previously set by the Court. Mr. Diaz said that neither he nor any of his acquaintances were able to pay any money. *Id.*; *see also* Ex. B, Gumby Decl. at ¶¶8-10; Ex. C, Wright Decl. at ¶¶5-6. He added that, if released, he could continue to sell his blood plasma and had a possible job lined up constructing pallets. *See* Ex. A, Diaz Decl. at ¶22; *see also* Ex. B, Gumby Decl. at ¶11. The Court did not inquire further about Mr. Diaz's employment history or financial means. Ex. A, Diaz Decl. at ¶¶22-24.
7. The Court then found Mr. Diaz in civil contempt and sentenced him to 30 days of incarceration unless he purged the contempt by paying \$250. *Id.* at ¶26. The Court did not make a finding that he was able to pay and was willfully refusing to do so, nor could the Court have done so based on the evidence presented at the hearing. Undersigned counsel requested a copy of the transcript on April 25 but have not yet received it.
8. Mr. Diaz lacked the ability to pay the purge amount on the day of the hearing and has no ability to pay the purge amount set by the Court. As a result, he has remained

¹ The hearing was originally scheduled for January 30, 2017, with notice mailed November 2, 2016. However, at the time Mr. Diaz was homeless and did not receive the notice. He was subsequently arrested and has been held on bail since April 6.

² He did not execute a knowing, voluntary, and intelligent waiver of counsel.

incarcerated since April 24, 2017.

9. If asked, Mr. Diaz could have established that he had no income or other means aside from selling his blood plasma, had been receiving public benefits, and was entirely dependent on financial support from Mr. Gumby and Mrs. Wright because he was unemployed and has been unable to maintain a job. *Id.* at ¶23. Mr. Diaz also could have explained, as evidenced on the docket, that he had made payments in 2015 and 2016 when he was gainfully employed, and that he will begin to make payments when he is again gainfully employed in the future. *Id.* at ¶12.

II. Argument

A. Mr. Diaz’s imprisonment is unlawful because there was no proper finding that he was able to pay and willfully refusing to do so.

10. Both the United States and Pennsylvania Supreme Courts have explicitly held that defendants who have defaulted on their fines and costs “must be given the opportunity to establish that they are unable to pay the fine. Upon a showing of indigency, [they] should be allowed to make payments in reasonable installments.” *Com. ex. Rel. Parrish v. Cliff*, 304 A.2d 158, 161 (Pa. 1973) (granting a writ of habeas corpus for four defendants who were jailed for failure to pay fines and costs). The right to due process prohibits imprisoning a defendant for failure to pay court fines, costs, or restitution without first “inquir[ing] into the reasons for the failure to pay.” *Bearden v. Georgia*, 461 U.S. 660, 672 (1983).
11. These constitutional provisions require that courts affirmatively inquire “into the reasons surrounding the [defendant’s] failure to pay, followed by a determination of whether the [defendant] made a willful choice not to pay.” *Eggers*, 742 A.2d at 176. Courts are prohibited from jailing defendants “unless it appears after [a] hearing that the defendant

is financially able to pay the fine or costs.” Pa. R. Crim. P. 706(A).

B. Mr. Diaz’s imprisonment is unlawful because he cannot pay the purge amount.

12. A court can only find a defendant guilty of civil contempt for nonpayment if it finds “[b]eyond a reasonable doubt, from the totality of the evidence before it,” that the defendant was capable of paying the purge amount at the time that he was found in contempt. *Barrett v. Barrett*, 368 A.2d 616, 620-21 (Pa. 1977). The foundation of a civil contempt order is the principle that the defendant holds the key to his own release: if he cannot, in fact, effect his own release, then the sentence is the same as a criminal sentence, but without the “safeguards of criminal procedure.” *Id.* at 621. That violates the law.
13. None of the evidence adduced at the hearing of April 24, 2017 supported a finding that Mr. Diaz had any present ability to pay his outstanding court debt. Indeed, all of the evidence available to the Court suggested the opposite. The Court may have disbelieved Mr. Diaz when he explained that he had no money or income, but there was no evidence before the Court to support a finding “[b]eyond a reasonable doubt, from the totality of the evidence” that Mr. Diaz was capable of paying the purge amount at the time that he was found in contempt. *Barrett*, 368 A.2d at 620-21 (“ . . . the crucial question is not whether he willfully and contemptuously violated the original orders, but whether he had the present ability to comply with the conditions set by the court for purging himself of his contempt.”). In fact, as Mr. Diaz’s declaration sets forth, he has not had the means to meet his own basic needs, much less pay his court debt.
14. That Mr. Diaz has been represented by the office of the public defender and has received public assistance “invite the presumption of indigence.” *Eggers*, 742 A.2d at 176 n.1. The

Court did not make the required determination that Mr. Diaz was able to pay the \$250 purge amount set by the Court despite the apparent indicia of indigence. *See* Ex. A., Diaz Decl. at ¶¶22-24. In fact, that Mr. Diaz was held since April 6 on \$100 bail and was unable to pay even that bail amount further underscores his inability to pay the purge amount, which—at \$250—was more than twice the amount of bail that he could not afford to post. *Id.* at ¶¶20, 26.

C. Mr. Diaz’s imprisonment is unlawful because he was not provided with counsel.

15. Mr. Diaz’s incarceration also violates his right to counsel under the Due Process clause of the Fourteenth Amendments of the United States Constitution. In *Turner v. Rogers*, 564 U.S. 431 (2011), the United States Supreme Court approved alternatives to counsel in civil contempt proceedings for failure to pay child support when the opposing party is an unrepresented parent,³ but its ruling expressly did not apply to “civil contempt proceedings where the underlying child support payment is owed to the State,” as “[t]hose proceedings more closely resemble debt-collection proceedings. The government is likely to have counsel or some other competent representative.” *Id.* at 446-47, 449. In such instances, due process requires that the court provide counsel to the defendant.
16. In addition, Rule 122 of the Rules of Criminal Procedure requires that defendants such as Mr. Diaz be provided with counsel in hearings before the Court involving imprisonment for nonpayment of fines and costs. *See Commonwealth v. Farmer*, 466 A.2d 677, 678 (Pa. Super. Ct. 1983) (analogous provision in Rule 122 (then numbered Rule 316)

³ Those alternatives are (1) notice to the defendant that his “ability to pay” is a critical issue in the contempt proceeding; (2) the use of a form (or the equivalent) to elicit relevant financial information; (3) an opportunity at the hearing for the defendant to respond to statements and questions about his financial status, (e.g., those triggered by his responses on the form); and (4) an express finding by the court that the defendant has the ability to pay. *Turner*, 564 U.S. at 446-48. None of these procedural safeguards, other than notice of the nature of the hearing, were afforded to Mr. Diaz. *See* Ex. A., Diaz Decl. ¶¶22-25

addressing summary offenses requires appointment of counsel prior to imprisonment for nonpayment of fines and costs).

17. Thus, both the United States Constitution and the Rules of Criminal Procedure required counsel for Mr. Diaz in the April 24, 2017 hearing. The failure to provide him with counsel renders his subsequent imprisonment illegal, regardless of his ability to pay.

* * *

18. As a result of the April 24 hearing, Mr. Diaz remains unlawfully imprisoned in the Lebanon County Correctional Facility. This Court should either issue the writ of habeas corpus forthwith and order Mr. Diaz released or require a response and hold a hearing on this matter, at which Mr. Diaz is present, forthwith. *See* 42 Pa. Cons. Stat. § 6504; *Balsamo v. Mazurkiewicz*, 611 A.2d 1250, 1253 (Pa. Super. Ct. 1992) (hearing must be held if petitioner has made a prima facie case entitling him to habeas relief).

WHEREFORE, Petitioner respectfully requests that this Honorable Court schedule this matter for a hearing forthwith and/or grant a writ of habeas corpus ordering his release from confinement forthwith.

DATED: May 2, 2017

Respectfully submitted,



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Exhibit A

**IN THE COURT OF COMMON PLEAS
FOR LEBANON COUNTY**

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA)

v.)

WILLIAM DIAZ)

**Case Nos. CP-38-CR-1838-2012
CP-38-CR-1175-2013**

Declaration of William Diaz

I, William Diaz, hereby state that the facts set forth below are true and correct to the best of my knowledge, information, and belief. Further, I understand that the statements herein are made subject to the penalties of 18 Pa. Cons. Stat. § 4904 (relating to unsworn falsification to authorities).

1. Since my criminal conviction in July 2013, I have struggled to find and keep employment to provide for my basic life needs. There have been several barriers to my employment, including my criminal record and poverty. Many employers have been uninterested in hiring me because of a retail theft conviction, and I have lost other jobs because I do not own a car and have not had reliable transportation. I have a learning disability that makes reading comprehension difficult, which is a further impediment to successful employment.
2. For example, through the employment agency Berks and Beyond, I obtained employment at Weber's Sawmill chopping and cutting wood. The job lasted for just over three months, but I lost it because the carpool I used to get to work was unreliable. It did not always get me to work on time, and I was fired as a result.

3. In August 2016, I started a manufacturing job at Supreme Corporation in Jonestown, Pennsylvania, but I also lost that job after about a week because I could not obtain transportation to and from work. At the time, I was staying with my sister, but—because she has five children—she was only able to provide me with transportation for the first week of employment. I was unable to find alternative transportation in that time and could not continue employment.
4. I have not had the money necessary to purchase a car so that I could get myself to work.
5. After the Supreme Corporation job, I moved to Reading in the hope of having more employment opportunities. I lived with a friend in an apartment during September and October. I looked for work but could not find any employment, so I earned my place in the apartment by performing chores like cleaning the apartment and taking a roommate's children to school.
6. Because I could not financially contribute to the apartment, I was kicked out in October and was homeless. During the next few weeks, I spent some of the time living on the street and other time at shelters at City Light Ministries and Hope Rescue Mission in Reading. I had some odd jobs, like construction work, but I never made enough money to end my homelessness.
7. While at City Light Ministries, I became acquainted with Ernest Gumby, who was volunteering at the shelter. Although he was also impoverished, he allowed me to stay with him in a room he was renting. In January, we moved into an apartment paid for by his mother Margaret Wright.
8. During the time I stayed with Mr. Gumby, I looked for jobs on Craigslist, through the Reading CareerLink, and attended a job fair at the DoubleTree Hotel. I had a couple of

pickup construction jobs, but none of that led to regular employment. Mr. Gumby and I volunteered at City Light Ministries while looking for employment.

9. Since January 2017, almost all of the money I made came from selling my blood plasma twice a week at Biomat USA, a blood donation center, in Reading. Biomat USA permitted me to sell my blood plasma twice a week, which paid \$20 the first donation and \$50 the second donation each week. I did this for about three months prior to my incarceration.

10. I was unaware of my eligibility for public assistance before I met Mr. Gumby, but after his suggestion, I applied for and was granted public benefits in the form of food stamps (SNAP) beginning in January 2017.

11. Mr. Gumby informed me that, after my arrest in early April on the fines and costs bench warrant issued in this matter, my meager possessions—such as my eyeglasses, blood plasma card, and EBT card—were put on the street by the landlord and have either been taken or destroyed.

12. When I had regular employment from February 2015 through March 2016, I made regular payments on my court fines and costs. During that time, I worked as a butcher at Food Plus in Lebanon, where my father was a manager. However, the owner never gave me a raise and I quit to seek other employment with higher wages; unfortunately, I have been unable to hold a higher-paying job, and the Food Plus position is no longer available for me. As described above, I have been unable to find regular employment since that time, and sources of income such as selling blood plasma did not make enough money for me to both cover my basic life needs and also pay my court fines and costs. When I am able to obtain sufficient employment, I will begin to again pay my fines and costs.

13. Mr. Gumby has informed me that he believes he has found me a job making pallets at the Millbrook Pallet Company near Allentown that I can start once I am released. If this employment opportunity works out, I may over time have an opportunity to earn sufficient income to pay for my basic life needs and then begin to once again pay my court fines and costs.
14. When I am released from jail, I intend to return to Reading to pursue the job with the Millbrook Pallet Company.
15. I have not had regular contact with my family members and cannot expect financial support from them. My friend Mr. Gumby is as poor as I and cannot help me pay my court fines and costs. His mother Mrs. Wright has also expended all of the extra resources she had available to keep us both housed.
16. In the past year, I have earned under \$1,000. I have not been able to pay my own basic expenses, never mind court fines and costs in the past year. I have had to live off the generosity of friends and family.
17. I have no financial resources or property of value. I do not have a bank account or savings, nor do I possess any credit cards.
18. In the underlying criminal cases in this matter, I received the services of the public defender, as I was unable to afford to pay an attorney.
19. According to the Court docket, the Lebanon County Probation Collections and Disbursement Unit mailed me a delinquency notice on November 2, 2016 to appear at a fines and costs hearing on January 30, 2017. At the time, I was homeless in Reading and did not receive the notice.

20. After I was arrested on the bench warrant issued at the January 30 hearing, I was brought before the Court for a bail hearing on April 6, 2017. The Hon. Samuel A. Kline set my bail at \$100. I was unable to post that bail and remained incarcerated until the fines and costs hearing on April 24, 2017.
21. At the hearing, a representative from the Lebanon County Probation Collections and Disbursement Unit presented the Court with information about how much I owe. I was one of many defendants present in the courtroom for contempt hearings that day for failure to pay court fines and costs. In every case I recall, the Court placed defendants on payment plans, most of which were \$100 a month—although defendants who received disability benefits were given payment plans of \$50 a month. I could not afford to pay \$50 a month, let alone \$100.
22. At the hearing, presided over by Judge Kline, the Court asked only whether I or any of my acquaintances would be able to pay anything towards my fines and costs to keep me out of jail. I informed him that neither I nor my acquaintances, none of whom were present, had any money to pay. I added, however, that I had a lead on a job constructing pallets that I could pursue if released and that I could continue to sell my blood plasma to make money. The Court did not respond to this information.
23. After I advised the Court that I had no ability to pay and provided the information described above, the Court made no further inquiry regarding my ability to pay. Had the Court made additional inquiry, I would have advised the Court that prior to my imprisonment I: 1) had no income aside from selling my blood plasma; 2) had been receiving food stamps; and 3) had recently been homeless and was only living in an apartment thanks to the generosity of my friend's mother.

24. At the hearing, beyond what was described above, the Court never inquired into my income and expenses, even though I had described that I was unable to pay.
25. I was never advised of the right to counsel.
26. At the conclusion of the hearing, the Court stated that I was in contempt for failure to pay and had to serve 30 days in jail unless I purged by paying \$250. The Court further set my payments at \$100 per month.
27. I have been and remain imprisoned in the Lebanon County Correctional Facility since the April 6, 2017 bench warrant hearing.

Pursuant to 18 Pa. Cons. Stat. § 4904, I, William Diaz, declare under penalty of perjury that the foregoing is true and correct.

DATED April 27, 2017

William P Diaz
William Diaz

Exhibit B

**IN THE COURT OF COMMON PLEAS
FOR LEBANON COUNTY**

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA)

v.)

WILLIAM DIAZ)

**Case Nos. CP-38-CR-1838-2012
CP-38-CR-1175-2013**

Declaration of Ernest Gumby

I, Ernest Gumby, hereby state that the facts set forth below are true and correct to the best of my knowledge, information, and belief. Further, I understand that the statements herein are made subject to the penalties of 18 Pa. Cons. Stat. § 4904 (relating to unsworn falsification to authorities).

1. I am a friend of William Diaz's and have known him since I met him at City Light Ministries in Reading at the end of October.
2. At the time I met Mr. Diaz, he was homeless, spending some time on the streets and some time at City Light Ministries.
3. Within a few weeks, I allowed Mr. Diaz to live with me so that he could get off of the streets and stay warm. Mr. Diaz stayed with me in the room I was renting until the beginning of January, at which point we moved into an apartment paid for by my mother Margaret Wright.
4. I lack the financial capacity to pay for my own permanent housing, and Mrs. Wright paid rent for our apartment until the beginning of April. The apartment we stayed in was not fit for habitation—for example, it lacked heat—and the landlord evicted all tenants in the

first week of April. After the eviction, he changed all of the locks and put all of our possessions, including Mr. Diaz's, out on the street.

5. During the time I knew Mr. Diaz, we both continually searched for work through CraigsList, the Reading CareerLink, and a career fair at the DoubleTree hotel. Mr. Diaz had a few construction jobs, but all of them were temporary and did not provide any significant source of income. Neither of us were able to find regular employment.
6. The only income Mr. Diaz regularly had was donating blood at the Reading Biomat USA twice a week. All of the money he earned from that went to our living expenses.
7. Mr. Diaz was unaware of the availability of food stamps (SNAP) until we met, but at my suggestion he applied for and began receiving those benefits.
8. At the time Mr. Diaz was arrested, he had no ability to meet his basic life needs and had no financial resources. If not for the generosity of my mother, Margaret Wright, he would have remained homeless throughout the winter.
9. To the best of my knowledge, Mr. Diaz is unable to pay any money to the Court and does not currently have \$100.
10. I do not have regular employment or any financial assets. I cannot afford to either support Mr. Diaz or pay his court fines and costs. However, I am currently renting a room where he is welcome to stay upon his release from jail.
11. I am aware of a potential job for Mr. Diaz at the Millbrook Pallet Company near Allentown. It should still be available for Mr. Diaz when he is released from jail.

Pursuant to 18 Pa. Cons. Stat. § 4904, I, Ernest Gumby, declare under penalty of perjury that the foregoing is true and correct.

DATED May 1, 2017

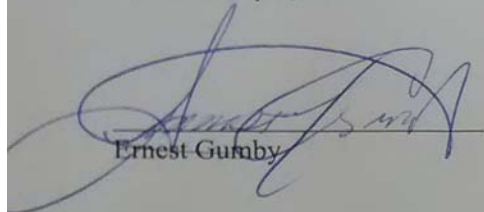

Ernest Gumby

Exhibit B

Exhibit C

CRIMINAL DIVISION

**Case Nos. CP-38-CR-1838-2012
CP-38-CR-1175-2013**

1. I am the mother of Ernest Gumby, who is friends with William Diaz. I have personally known Mr. Diaz since he started staying with my son in November 2016.
2. In the time I have known Mr. Diaz, he—like my son—lacked the financial resources necessary to meet his basic life needs. I have subsidized their housing by paying for them to have an apartment for three months, and I also bought food for them to supplement the benefits they received through food stamps (SNAP).
3. I know that Mr. Diaz consistently looked for work since at least November 2016. For example, he and my son went to several temp agencies in Berks County. They also made use of the career services at CareerLink in Reading and looked for jobs at the DoubleTree Hotel.
4. I regularly drove Mr. Diaz to sell his blood plasma twice a week at Biomat USA. This was Mr. Diaz's only regular source of income.

5. After Mr. Diaz was arrested, he asked me to post his bail, but I could not afford to do so.

As I also have a financial hardship, I cannot provide additional financial support to pay

Mr. Diaz's court fines and costs.

6. To the best of my knowledge, Mr. Diaz has no financial resources and cannot afford to pay the \$100 required by the Court.

Pursuant to 18 Pa. Cons. Stat. § 4904, I, Margaret Wright, declare under penalty of perjury that the foregoing is true and correct.

DATED May 1, 2017

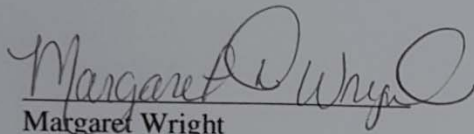

Margaret Wright

Exhibit D

Payment History Report

Donor Fees Per Donor

Donor Center:BIU - Reading

From: 09/30/2016 00:00:00 am

To: 04/28/2017 11:59:59 pm

Report filters: Donor Number:077809514

Payment Date	UCN	Donor Number / Name	Employee Name	Program	Item Nr	Visit Type	Bonuses
06/03/2017 07:43 PM	0290482177	9514-WILLIAM DIAZ	ALYSSA DAWSON	NSP NAT	11-NATO	DONATION	
10/03/2017 04:10 PM	0290482624	9514-WILLIAM DIAZ	TARA DORSEY	NSP NAT	11-NATO	DONATION	RETENTION_BONUS, SECOND_DO
13/03/2017 07:37 PM	0290482877	9514-WILLIAM DIAZ	MARLENY	NSP NAT	11-NATO	DONATION	
18/03/2017 07:43 PM	0290483344	9514-WILLIAM DIAZ	BRIAN HODGE	NSP NAT	11-NATO	DONATION	RETENTION_BONUS, SECOND_DO
20/03/2017 07:44 PM	0290483446	9514-WILLIAM DIAZ	JHAINE DE LA	NSP NAT	11-NATO	DONATION	
25/03/2017 06:49 PM	0290483998	9514-WILLIAM DIAZ	MARLENY	NSP NAT	11-NATO	DONATION	BIRTHDAY_BONUS, RETENTION
27/03/2017 07:40 PM	0290484092	9514-WILLIAM DIAZ	CHIMERE ROSTICK	NSP NAT	11-NATO	DONATION	

Donor Center:BITU - Reading

From: 09/30/2016 00:00:00 am

To: 04/28/2017 11:59:59 pm

Report filters: Donor Number:077809514

Payment History Report

Donor Fees Per Donor

89

Payment Date	DCN	Donor Number / Name	Employee Name	Program	Item Nr	Visit Type	Bonuses
26/10/2016 10:16 AM	0290468392	9514-WILLIAM DIAZ	MARLENY	NSP NAT	11-NATO	DONATION	RETENTION_BONUS
02/11/2016 11:11 AM	0290468865	9514-WILLIAM DIAZ	MARIA VASQUEZ	NSP NAT	11-NATO	DONATION	
04/11/2016 11:43 AM	0290469136	9514-WILLIAM DIAZ	MARLENY	NSP NAT	11-NATO	DONATION	RETENTION_BONUS, SECOND_DO
09/11/2016 03:51 PM	0290469654	9514-WILLIAM DIAZ	ALYSSA DAWSON	NSP NAT	11-NATO	DONATION	
11/11/2016 05:51 PM	0290469951	9514-WILLIAM DIAZ	ALYSSA DAWSON	NSP NAT	11-NATO	DONATION	RETENTION_BONUS, SECOND_DO
16/11/2016 03:03 PM	0290470389	9514-WILLIAM DIAZ	MARLENY	NSP NAT	11-NATO	DONATION	
18/11/2016 06:47 PM	0290470692	9514-WILLIAM DIAZ	CHIMERE ROSTICK	NSP NAT	11-NATO	DONATION	RETENTION_BONUS
23/11/2016 01:04 PM	0290471093	9514-WILLIAM DIAZ	PALOMA MARTINEZ	NSP NAT	11-NATO	DONATION	
25/11/2016 10:41 AM	0290471287	9514-WILLIAM DIAZ	MARIA VASQUEZ	NSP NAT	11-NATO	DONATION	RETENTION_BONUS
30/11/2016 12:08 PM	0290471756	9514-WILLIAM DIAZ	MARLENY	NSP NAT	11-NATO	DONATION	
05/12/2016 02:25 PM	0290472275	9514-WILLIAM DIAZ	MARLENY	NSP NAT	11-NATO	DONATION	
09/12/2016 12:02 PM	0290472628	9514-WILLIAM DIAZ	MARIA VASQUEZ	NSP NAT	11-NATO	DONATION	RETENTION_BONUS, SECOND_DO
13/12/2016 03:22 PM	0290473202	9514-WILLIAM DIAZ	PALOMA MARTINEZ	NSP NAT	11-NATO	DONATION	
15/12/2016 05:37 PM	0290473499	9514-WILLIAM DIAZ	PALOMA MARTINEZ	NSP NAT	11-NATO	DONATION	RETENTION_BONUS, SECOND_DO
20/12/2016 02:43 PM	0290474004	9514-WILLIAM DIAZ	LUZ GUZMAN	NSP NAT	11-NATO	DONATION	
22/12/2016 02:14 PM	0290474255	9514-WILLIAM DIAZ	MARLENY	NSP NAT	11-NATO	DONATION	RETENTION_BONUS, SECOND_DO
28/12/2016 06:10 PM	0290474911	9514-WILLIAM DIAZ	BEATRIZ ROSARIO-	NSP NAT	11-NATO	DONATION	
02/01/2017 06:37 PM	0290475418	9514-WILLIAM DIAZ	ALYSSA DAWSON	NSP NAT	11-NATO	DONATION	
04/01/2017 07:30 PM	0290475639	9514-WILLIAM DIAZ	ALYSSA DAWSON	NSP NAT	11-NATO	DONATION	RETENTION_BONUS
09/01/2017 06:28 PM	0290476146	9514-WILLIAM DIAZ	CHIMERE ROSTICK	NSP NAT	11-NATO	DONATION	
11/01/2017 06:02 PM	0290476385	9514-WILLIAM DIAZ	MARLENY	NSP NAT	11-NATO	DONATION	RETENTION_BONUS, SECOND_DO
16/01/2017 02:48 PM	0290476843	9514-WILLIAM DIAZ	CHIMERE ROSTICK	NSP NAT	11-NATO	DONATION	
18/01/2017 01:08 PM	0290477074	9514-WILLIAM DIAZ	JONATHAN NOECKER	NSP NAT	11-NATO	DONATION	RETENTION_BONUS, SECOND_DO
23/01/2017 12:44 PM	0290477632	9514-WILLIAM DIAZ	MARIA VASQUEZ	NSP NAT	11-NATC	DONATION	
25/01/2017 01:17 PM	0290477902	9514-WILLIAM DIAZ	THERESA KUNDEL	NSP NAT	11-NATO	DONATION	RETENTION_BONUS, SECOND_DO
30/01/2017 03:06 PM	0290478501	9514-WILLIAM DIAZ	MARLENY	NSP NAT	11-NATO	DONATION	

CRIMINAL DIVISION

OTN: L7944241

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ORIGINAL

IN THE COURT OF COMMON PLEAS
FOR LEBANON COUNTY

ENTERED & FILED
CLERK OF COURTS
LEBANON, PA
17 AUG 18 PM 11 03

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA)

v.)

WILLIAM DIAZ)

Case Nos. CP-38-CR-1838-2012

OTN: L7496764

CP-38-CR-1175-2013

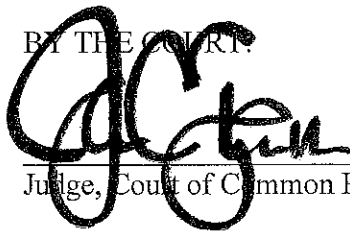
OTN: L7944241

ORDER GRANTING MOTION TO AMEND THE RECORD

NOW TO WIT, this 18th day of August, 2017, upon consideration of the within Motion to Amend the Record in the above-captioned case, it is hereby ORDERED that:

1. The Defendant's Motion is GRANTED; and
2. The record in this matter is AMENDED such that, in the portion of the April 24, 2017 transcript where the Defendant's statement is "inaudible," the record shall reflect that the Defendant stated that no one came that day with any money to pay his fines and costs, that he had received a letter from a friend stating that he had a possible job constructing pallets available in Reading, and that he could continue to sell his blood plasma to make some money.

BY THE COURT



Judge, Court of Common Pleas

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CLERK OF COURTS
LEBANON, PA