

IN THE
SUPERIOR COURT OF PENNSYLVANIA
MIDDLE DISTRICT

No. 894 MDA 2017

COMMONWEALTH OF PENNSYLVANIA

Appellee

vs.

BRIAN SMETANA

Appellant

BRIEF OF THE COMMONWEALTH

Matthew R. Mellon, Esquire
Assistant District Attorney
Room 11, Municipal Building
400 South Eighth Street
Lebanon, PA 17042
PA Attorney No. 323087
(717) 228-4403
Attorney for the Commonwealth

TABLE OF CONTENTS

TABLE OF CITATIONS.....ii

STATEMENT OF THE QUESTIONS INVOLVED.....1

STATEMENT OF THE CASE.....2

SUMMARY OF ARGUMENT.....4

ARGUMENT.....5

CONCLUSION.....11

TABLE OF CITATIONS

Cases:

<i>Commonwealth ex. rel. Parrish v. Cliff</i> , 304 A.2d 158, 161 (Pa. 1973).....	7
<i>Lachat v. Hinchcliffe</i> , 769 A.2d 481, 488-489 (Pa. Super. 2001).....	5
<i>Commonwealth, Lancaster County v. Rosser</i> , 407 A.2d 857 (Pa. Super. 1979).....	5
<i>Commonwealth v. Schwartz</i> , 418 A.2d 637, 639 (Pa. Super. 1980).....	6

Statutes:

Pa.R.Crim.P. 706(A).....	5
Pa.R.Crim.P. 706(C).....	6
Pa.R.Crim.P. 706(D).....	6

STATEMENT OF THE QUESTIONS INVOLVED

A. Whether the Trial Court erred by holding Defendant in civil contempt for failure to pay his fines and costs.

(Suggested Answer: No)

STATEMENT OF THE CASE

By way criminal information, Brian Smetana (hereinafter “Defendant”) was charged with one (1) count Loitering and Prowling at Night,¹ and three (3) summary violations. Defendant pled guilty to these charges. Defendant was sentenced and ordered to pay fines and costs. Defendant currently owes over \$900 in fines and costs.

Defendant was scheduled for a hearing on March 27, 2017, because he failed to make payments on his fines and costs. Defendant failed to appear for that hearing and the court issued a bench warrant as a result of Defendant’s absence. Defendant was later arrested on the bench warrant and was brought to a bench warrant hearing before the Honorable Bradford H. Charles, Judge, on April 5, 2017. At the hearing, Judge Charles set Defendant’s bail in the amount of \$500 cash. Defendant did not have \$500 for bail and consequently remained in incarceration.

Defendant was then scheduled for a fines and costs contempt hearing on April 24, 2017, before the Honorable Samuel A. Kline, Judge. At the hearing, Defendant was held in civil contempt for his inability to pay his fines and costs. Defendant was sentenced to 30 days in jail. Judge Kline set a purge

¹ 75 Pa.C.S.A. § 3929 (A)(1)

condition of \$200 and ordered Defendant to pay his fines and costs by monthly installments of \$100.

Defendant is now appealing the April 24, 2017, decision of the Trial Court which held Defendant in civil contempt for his failure to pay his fines and costs.

SUMMARY OF ARGUMENT

The trial court may incarcerate defendants who do not pay their fines and costs. The judge is given discretion in determining whether a defendant is willfully refusing to pay their fines and costs. The judge is also given discretion on how to determine whether a defendant is willfully refusing to pay their fines and costs. Furthermore, the court determines whether a defendant is financially able or unable to pay.

If a judge determines that a defendant is willfully refusing to pay their fines and costs, the judge may hold that defendant in civil contempt. The court then sets a purge amount in order to give the Defendant an opportunity to avoid further incarceration.

Each of these factors, considerations, and determinations lie within the discretion of the trial court.

ARGUMENT

A. The Trial Court did not err by holding Defendant in civil contempt for failure to pay his fines and costs.

Courts have to power of civil contempt. Civil contempt allows a court to imprison an individual who is willfully disobeying a court order. To sustain a finding of civil contempt, the complainant must prove certain distinct elements: (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, 488-489 (Pa. Super. 2001). Civil contempt is a suitable procedure to require a defendant to comply with court order for payment of fine and costs. *Commonwealth, Lancaster County v. Rosser*, 407 A.2d 857 (Pa. Super. 1979).

The Pennsylvania Rules of Criminal Procedure provides that a court shall not commit the defendant to prison for failure to pay a fine or costs unless it appears after hearing that the defendant is financially able to pay the fine or costs. *Pa.R.Crim.P. 706(A)*.

Rule 706 also provides that in determining the amount and method of payment of a fine or costs shall, insofar as is just and practicable, the court should consider the burden upon the defendant by reason of the defendant's

financial means, including the defendant's ability to make restitution or reparations. *Pa.R.Crim.P. 706(C)*.

Additionally, Rule 706 the Pennsylvania Rules of Criminal Procedure states that:

In cases in which the court has ordered payment of a fine or costs in installments, the defendant may request a rehearing on the payment schedule when the defendant is in default of a payment or when the defendant advises the court that such default is imminent. At such hearing, the burden shall be on the defendant to prove that his or her financial condition has deteriorated to the extent that the defendant is without the means to meet the payment schedule. Thereupon the court may extend or accelerate the payment schedule or leave it unaltered, as the court finds to be just and practicable under the circumstances of record. When there has been default and the court finds the defendant is not indigent, the court may impose imprisonment as provided by law for nonpayment.

Pa.R.Crim.P. 706(D).

The sentencing judge is required to determine, before imposing a fine on defendant, that defendant is able to pay it. *Commonwealth v. Schwartz*, 418 A.2d 637, 639 (Pa. Super. 1980). If it appears that the defendant cannot pay a fine, the judge will have to consider alternative penalties. *Id.* If the judge does not at the outset determine the defendant's ability to pay a fine, he will

often be forced to imprison him at some later point, when he fails to pay the fine. *Id.*

However, before a defendant may be imprisoned for not paying a fine, he must be given an opportunity to establish that he is unable to pay the fine. *Id.* Upon a showing of indigency, the defendant should be allowed to make payments in reasonable installments. *Commonwealth ex. rel. Parrish v. Cliff*, 304 A.2d 158, 161 (Pa. 1973).

The judge has discretion when determining whether an individual has the ability or inability to pay their fines and costs. Neither Rule 706 of the Pennsylvania Rules of Criminal Procedure, nor the Rule's surrounding case law, provides a judge with guidance on how to determine whether a defendant is willfully refusing to pay their fines and costs.

The Court in this case was under the impression that Defendant must have had *some* ability to pay his fines and cost. First, the Defendant stated that he was working, but that his boss had "gone out of town". (R. 16a). Second, Defendant had been consistently paying his fines and costs but then abruptly stopped paying his fines and costs. (R. 17a). Third, Defendant mentioned that he had work waiting for him as a house flipper and that he would be willing to have his wages garnished. (R. 21a). And finally,

Defendant alluded to the fact that his sister could possibly pay \$200, but that she was working. (R. 22a). Defendant made no effort to produce his sister.

Considering these facts as a whole, Defendant must have had some ability to pay his fines and costs and willfully refused to do so. The Trial Court did not abuse its discretion.

Accordingly, Defendant's claims should be dismissed.

CONCLUSION

For the foregoing reasons, and in the interests of justice, the Commonwealth requests that This Honorable Court affirm the Trial Court's order and dismiss Defendant's claims.

Respectfully Submitted,

Date: November 20, 2017

By:



Matthew R. Mellon, Esquire
Assistant District Attorney
Pa. Attorney No. 323087
400 S. 8th Street, Room 11
Lebanon, PA 17042
(717) 228-4403