

COURT OF APPEALS  
RICHLAND COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	
	:	Hon. W. Scott Gwin, P.J.
Plaintiff-Appellee	:	Hon. Sheila G. Farmer, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 09-CA-30
RICKEY JORDAN	:	
	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Richland County Court of  
Common Pleas Case No. 2007-CR-788D

JUDGMENT: AFFIRMED

DATE OF JUDGMENT ENTRY: August 11, 2009

APPEARANCES:

For Plaintiff-Appellee:

KIRSTEN PSCHOLKA-GARTNER  
0077792  
Assistant Richland County Prosecutor  
38 S. Park St.  
Mansfield, Ohio 44902

For Defendant-Appellant:

RANDALL E. FRY 0011432  
10 W. Newlon Place  
Mansfield, Ohio 44902

*Delaney, J.*

{¶1} Defendant-Appellant, Rickey Jordan, appeals from the judgment of the Richland County Court of Common Pleas, finding him guilty of one count of Illegal Processing of Drug Documents. Specifically, Appellant is contesting the imposition of a fine imposed upon him of \$5,000.00. The State of Ohio is Plaintiff-Appellee.

{¶2} On September 14, 2007, Appellant presented a prescription to be filled at Walgreens pharmacy in Mansfield, Ohio, for 120 Percocet tablets, a Schedule II controlled substance. Pharmacist Kathy Histed noticed that the signature on the prescription pad was not that of Dr. Todd Strickland and called his office to verify such. Dr. Strickland confirmed that he uses a stamp signature for all of his prescriptions.

{¶3} After Ms. Histed confirmed that the prescription was forged, she contacted the Mansfield Police Department, who responded to the scene and arrested Appellant in the parking lot. Upon being arrested, Appellant informed the officers that he was picking up the prescription for his friend. The prescription did have the name of a different person on it; however, the date of birth listed on the prescription was Appellant's. Officers also discovered a crack pipe in Appellant's pocket.

{¶4} Appellant was indicted on one count of illegal processing of drug documents, a violation of R.C. 2925.23(B)(1), a felony of the fourth degree, and one count of possession of drug paraphernalia, a violation of M.C.O. 511.02(A), a misdemeanor of the first degree.

{¶5} On August 18, 2008, Appellant pled guilty to both charges and was released on a recognizance bond, pending the completion of a presentence investigation report. On October 8, 2008, Appellant was sentenced to twelve months in

prison for the illegal processing conviction and was sentenced to three months on the misdemeanor drug paraphernalia charge, which was to be run concurrent to his felony sentence. The court additionally imposed a \$5,000.00 fine.

{¶6} Appellant raises one Assignment of Error:

{¶7} “I. THE TRIAL COURT ERRED BY IMPOSING A FIVE THOUSAND DOLLAR FINE AS PART OF IT’S [SIC] SENTENCE WITHOUT CONSIDERING THE DEFENDANT-APPELLANT’S PRESENT AND FUTURE ABILITY TO PAY SAID FINE AS WELL AS HIS INDIGENT STATUS.”

I.

{¶8} In his sole assignment of error, Appellant argues that the trial court erred in imposing a \$5,000.00 fine on him. Specifically, Appellant claims that the trial court did not consider Appellant’s present or future ability to pay the fine and that the court did not consider Appellant’s indigent status.

{¶9} O.R.C. 2929.18 governs the imposition of financial sanctions as a part of sentencing in felony cases. Specifically, R.C. 2929.18 permits the imposition of a \$5,000.00 fine for a felony of the fourth degree. Prior to imposing such a financial sanction, the court must consider, “the offender's present and future ability to pay the amount of the sanction or fine.” R.C. 2929.19(B)(6).

{¶10} The decision to impose or waive a fine rests within the sound discretion of the court and will not be reversed on appeal absent an abuse of that discretion. *State v. Gipson* (1998), 80 Ohio St.3d 626, 634, 687 N.E.2d 750. “The term ‘abuse of discretion’ connotes more than an error of law or of judgment; it implies that the court's attitude is

unreasonable, arbitrary or unconscionable.” *State v. Adams* (1980), 62 Ohio St.2d 151, 157, 404 N.E.2d 144.

{¶11} As this Court explained in *State v. Perry*, 5<sup>th</sup> Dist. No.2004-CA-00066, 2005-Ohio-85:

{¶12} “ [T]here are no express factors that must be taken into consideration or findings regarding the offender's ability to pay that must be made on the record.’ *State v. Martin*, 140 Ohio App.3d 326, 338, 747 N.E.2d 318, 2000-Ohio-1942. Although a court may hold a hearing under R.C. 2929.18(E) ‘to determine whether the offender is able to pay the [financial] sanction or is likely in the future to be able to pay it,’ a court is not required to do so. *State v. Stevens* (Sept. 21, 1998), 12th Dist. No. CA98-01-001, unreported (‘although the trial court must consider the offender's ability to pay, it need not hold a separate hearing on that issue’). ‘All that R.C. 2929.19(B)(6) requires is that the trial court consider the offender's present and future ability to pay.’ *State v. Dunaway*, 12th Dist. No. CA2001-12-280, 2003-Ohio-1062, at 36; *Martin*, 140 Ohio App.3d at 33, 746 N.E.2d 642” *Id.* at \*4-5, 746 N.E.2d 642. See also *State v. Thompson*, 5<sup>th</sup> Dist. No. 06-CA-62 , 2008-Ohio-435, at ¶19. While it would be preferable for the trial court to expressly state on the record that it has considered a defendant’s present and future ability to pay a fine, it is not required. *State v. Parker*, 2<sup>nd</sup> Dist. No. 03CA0017, 2004-Ohio-1313, ¶42, citing *State v. Slater*, 4<sup>th</sup> Dist. No. 01CA2806, 2002-Ohio-5343. “The court’s consideration of that issue may be inferred from the record under appropriate circumstances.” *Id.*

{¶13} In the present case, the trial court stated on the record and in its judgment entry that it had read the presentence investigation report (“PSI”) prior to imposing

sentence. The PSI in this case includes Appellant's employment history and financial status. Appellant has no biological children, does not owe child support, and has never declared bankruptcy. There is nothing in the record which indicates that Appellant is unable to procure some type of employment upon his release from confinement.

{¶14} Given this information, we find that there is sufficient evidence in the record to support the trial court's imposition of the fine. See *State v. Parker*, supra; see also, *State v. Dunaway*, 12<sup>th</sup> Dist. No. CA2001-12-280, 2003-Ohio-1062.

{¶15} Appellant's assignment of error is overruled.

{¶16} Accordingly, the judgment of the Richland County Court of Appeals is affirmed.

By: Delaney, J.

Gwin, P.J. and

Farmer, J. concur.

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HON. PATRICIA A. DELANEY

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HON. W. SCOTT GWIN

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HON. SHEILA G. FARMER

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
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Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
RICKEY JORDAN	:	
	:	
Defendant-Appellant	:	Case No. 09-CA-30
	:	

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Richland County Court of Common Pleas is affirmed. Costs assessed to Appellant.

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HON. PATRICIA A. DELANEY

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HON. W. SCOTT GWIN

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HON. SHEILA G. FARMER