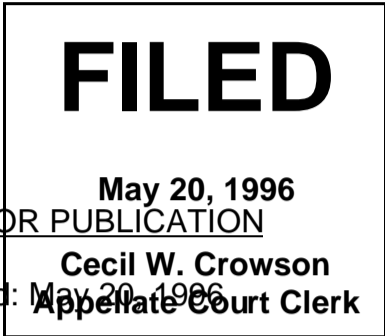


IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE



STATE OF TENNESSEE,)

Appellee,)

v.)

DAVID R. SHELTON,)

Appellant.)

NOT FOR PUBLICATION

Filed: May 20, 1996
Cecil W. Crowson
Appellate Court Clerk

MONTGOMERY CRIMINAL

Hon. James E. Walton, Judge

No. 01S01-9507-CC-00104

For Appellee:

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OPINION

COURT OF CRIMINAL APPEALS
REVERSED.

DROWOTA, J.

This case presents the question of whether a trial court may, pursuant to

Tenn. Code Ann. § 55-10-403(b)(2), waive the mandatory fine for driving under the influence (DUI) if the defendant is found to be indigent. Because we conclude that the court does have this authority, we reverse the judgment of the Court of Criminal Appeals and remand the case for further proceedings.

FACTS AND PROCEDURAL HISTORY

The defendant, David R. Shelton, was convicted by a jury of DUI, his second such offense; and as part of the sentence, the trial court ordered that he pay a fine of \$500. The defendant's appointed counsel then asked the trial court to waive the fine because of the defendant's indigence. The trial court responded to the request as follows: "I will give some thought to that, but I do not know that I have the ability to waive a minimum, mandatory fine." The trial court declined to waive the fine.

The defendant then appealed to the Court of Criminal Appeals, which affirmed the trial court's judgment. As to whether the trial court could have waived the minimum fine because of the defendant's indigence, the Court stated that the issue was "moot" because there was no indication that the trial court had in fact desired to waive the fine. The Court went on to say, however, that: "No law has been cited and none is known that exempts indigents from having mandatory fines assessed against them." The defendant subsequently applied for permission to appeal, which we granted.

ANALYSIS

The defendant argues that trial courts do have the authority to waive minimum fines for DUI upon a finding of indigence. He cites Tenn. Code Ann. §§ 55-10-403(b)(2) and 55-10-303(b)(1) as support for this argument. Those statutes provide, in pertinent part: “Unless the judge, using the applicable criteria set out in § 40-14-202(b), determines that a person convicted of violating the provisions of § 55-10-401-55-10-404 is indigent, the minimum applicable fine shall be mandatory and not subject to reduction or suspension ...”; and:

In addition to all other requirements of law, prior to reinstating the driving privileges and/or reissuing a driver license to any person who has been convicted of the offense of driving under the influence, the department [of safety] shall require certification that all fines and costs have been paid to the court of jurisdiction. Such certification shall be made upon a form supplied by the department, and shall indicate the fines and costs levied by the court, or that the fines and/or costs were waived as a result of the person being found to be indigent by the court, if such court is located within this state.

(Emphasis added). The defendant concludes that because trial courts have the authority to waive the minimum fine, and because he is in fact indigent, the trial court should have exercised its authority here.

The State does not dispute the proposition that trial courts have the authority to waive the minimum fine upon a determination of indigency. Rather, the State argues that because the defendant posted a \$10,000 appeal bond, he may not actually be indigent and thus may not be eligible to have the fine waived. The State concludes that because the answer to this question is unclear, this Court should remand the case to the trial court for further proceedings.

The propositions of law advanced by the parties are correct. Trial courts are empowered to waive the minimum fine for DUI upon a determination of indigency; indeed, it would be difficult for the State to maintain otherwise in light of Attorney General Opinion No. U93-01, which provides, in pertinent part: “pursuant to T.C.A. § 55-10-403(b)(2), the court may waive the minimum mandatory fine if the defendant convicted of DUI is indigent. Authority to waive a DUI mandatory fine is consistent with the court’s general authority to waive a fine. T.C.A. § 40-24-102 ...”. Because this record does not disclose whether the defendant is actually indigent, this case is hereby remanded to the Montgomery County Criminal Court for further proceedings.

FRANK F. DROWOTA III
JUSTICE

Concur:

Anderson, CJ.
Reid, Birch, White, JJ.